

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MASS ENGINEERED DESIGN, INC. \* Civil Docket No.  
\* 2:06-CV-272  
VS. \* Marshall, Texas  
\*  
\* November 13, 2008  
ERGOTRON INC., ET AL \* 1:00 P.M.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE  
AND A JURY

APPEARANCES:

FOR THE PLAINTIFF: MR. MAX TRIBBLE  
Susman Godfrey  
1000 Louisiana St., Suite 5100  
Houston, TX 77002  
MR. JUSTIN NELSON  
MR. JAY NEUKOM  
Susman Godfrey  
1201 Third Avenue, Suite 3800  
Seattle, WA 98101  
MR. OTIS CARROLL  
Ireland Carroll & Kelley  
6101 South Broadway, Suite 500  
Tyler, TX 75703  
MR. FRANKLIN JONES  
Jones & Jones  
201 East Houston Street  
Marshall, TX 75670  
MR. GREG MAAG  
MR. JONATHAN PIERCE  
Conley Rose  
600 Travis Street, Suite 7100  
Houston, TX 77002

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR  
MS. JUDY WERELINGER, CSR  
Official Court Reporters  
100 East Houston, Suite 125  
Marshall, TX 75670  
903/935-3868

(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

APPEARANCES CONTINUED:

FOR THE DEFENDANTS: MR. KURT NIEDERLUECKE  
(Ergotron, Inc.) MS. LORA FRIEDEMANN  
MR. GRANT FAIRBAIRN  
MS. LAURA MYERS  
Fredrikson & Byron  
200 South Sixth St., Suite 4000  
Minneapolis, MN 55042  
MR. ERIC FINDLAY  
Ramey & Flock  
100 East Ferguson, Suite 500  
Tyler, TX 75702

(Dell, Inc.) MR. CRAIG TYLER  
Wilson Sonsini Goodrich & Rosati  
8911 Capital of Texas Highway  
Westech 360, Suite 3350  
Austin, TX 78759-7247  
MR. BLAKE ERSKINE  
Erskine & McMahon  
P.O. Box 3485  
Longview, TX 75606  
MR. MATT REED  
MS. NATALIE MORGAN  
Wilson Sonsini Goodrich & Rosati  
12235 El Camino Real, Suite 200  
San Diego, CA 92130

\* \* \* \* \*

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

All right. Did the parties have the  
times on the morning videos?

MR. TRIBBLE: We do, Your Honor.

1 The first one played, Henry Garrana, was 44 seconds.  
2 That was all Plaintiff. The second Garrana was  
3 Plaintiffs, 6 minutes, 13 seconds; Defendants, 3  
4 minutes, 27 seconds.

5 And I think we're ready now to play  
6 Mr. Santandrea, the product marketing manager at Dell.

7 THE COURT: Santandrea, what's the time  
8 on that?

9 MR. TRIBBLE: It's 22 minutes, 56 seconds  
10 for Plaintiff; 3 minutes, 11 seconds for Defendants.

11 THE COURT: All right. Very well.  
12 You may proceed.

13 (Video playing.)

14 QUESTION: Do you understand you are here  
15 testifying as Dell's 30(b)(6) witness?

16 ANSWER: Yes.

17 QUESTION: Do you know what that means?  
18 That your testimony binds the corporation?

19 ANSWER: That -- yes.

20 QUESTION: Mr. Santandrea, what is your  
21 job?

22 ANSWER: I am a product marketing manager  
23 at Dell.

24 QUESTION: Does your job also include  
25 sales of non-Dell-branded monitors?

1                   ANSWER:   No.

2                   QUESTION:   What is the difference between  
3 a Dell-branded monitor and a non-Dell-branded monitor?

4                   ANSWER:   A Dell-branded monitor is a  
5 monitor that has been engineered and manufactured by  
6 Dell.

7                   QUESTION:   You work to have a higher  
8 margin for Dell-branded products than non-Dell-branded  
9 products, correct?

10                  ANSWER:   Yes.

11                  QUESTION:   Does Dell believe that the  
12 Mass Engineered Design monitors are critical to the  
13 financial and healthcare markets?

14                  ANSWER:   Through our investigation and  
15 speaking with the product manager who was most closely  
16 associated with Mass Engineered and the product, it did  
17 not seem as a critical part of the offering.

18                  QUESTION:   You are aware that at one  
19 point Dell did think that Mass was a critical part of  
20 the offering for those markets, correct?

21                  ANSWER:   It's difficult to say what was  
22 thought at the time. But it was included in what we  
23 call the configurator where we sell computers.

24                  QUESTION:   Can you please -- you see  
25 where it says Mass Engineered Design on Line 35 right

1 here?

2 ANSWER: I do see it.

3 QUESTION: Can you please read Column 1  
4 of that spreadsheet, please?

5 ANSWER: Niche, special applications  
6 provide dual, triple, and quad flat panel solutions  
7 critical to financial and healthcare markets not  
8 available through distribution.

9 QUESTION: Mr. Santandrea, does that  
10 refresh your recollection about whether, as of the time  
11 of this spreadsheet, Mass -- excuse me -- Dell thought  
12 that Mass Engineered Design monitors were, quote,  
13 critical to financial and healthcare markets, end quote?

14 ANSWER: I'm not sure what information  
15 this spreadsheet is representing.

16 QUESTION: Okay. So just so I'm clear  
17 and the jury is clear --

18 ANSWER: Uh-huh.

19 QUESTION: -- you don't know whether --  
20 when Dell wrote critical to financial and healthcare  
21 markets whether Dell actually meant that it was critical  
22 to financial and healthcare markets?

23 ANSWER: Well, it says critical to  
24 financial and healthcare markets, but I'm not sure what  
25 they meant.

1 QUESTION: What do you think they meant?

2 ANSWER: It could be a variety of things.

3 QUESTION: Do you think that it meant  
4 that Mass monitors were critical to those markets, to  
5 selling products in those markets?

6 ANSWER: Can I see what the title of this  
7 column is?

8 QUESTION: Absolutely. It's entitled  
9 reason for existence.

10 Does that refresh your recollection or  
11 your testimony for me and the jury about whether in a  
12 column titled reason for existence, when Dell wrote  
13 critical to financial and healthcare markets, whether  
14 Dell actually meant that it was critical to healthcare  
15 and financial markets?

16 ANSWER: It's -- it's hard to say. I --  
17 I don't know what -- where this is coming from. So I  
18 don't know if this is marketing speak or if this is an  
19 internal reference.

20 QUESTION: Can you tell us any other  
21 reason besides what it says, that Mass Engineered Design  
22 is, quote, critical to financial and healthcare markets,  
23 end quote, why you would have said that, besides the  
24 obvious, that it was critical to financial and  
25 healthcare markets?

1                   ANSWER: I don't know what this document  
2 is, but we do training for salespeople, and I could see  
3 how we would give a summary of products to the  
4 salespeople to help them understand where things go.

5                   And usually training the salespeople  
6 tends to be pretty extreme so that they get the point.

7                   QUESTION: Do you call Ergotron critical  
8 to financial and healthcare markets?

9                   ANSWER: It does not say critical in that  
10 cell.

11                  QUESTION: Can you please read the second  
12 to last sentence starting with I understand allowed,  
13 please?

14                  ANSWER: I understand your solution is  
15 better, and that's where we are moving.

16                  QUESTION: You don't dispute, do you,  
17 that this is Dell telling Mass that, quote, I understand  
18 your solution is better, end quote, correct?

19                  ANSWER: It says that in the e-mail, and  
20 yes, it appears to be from Dell.

21                  QUESTION: And will you please tell me  
22 and the jury what the subject of the e-mail is?

23                  ANSWER: The subject is re: Mass  
24 Multiples monitors.

25                  QUESTION: In your role as product

1 manager of displays in North America, does Dell have a  
2 preference for selling Dell-branded monitors as opposed  
3 to non-Dell-branded monitors?

4           ANSWER: We focus more of our energies on  
5 selling Dell-branded monitors. However, we listen to  
6 the customer. And if the customer requests another  
7 brand, we will sell it to them to the best of our  
8 abilities.

9           QUESTION: Unless the customer requests  
10 it, you're not going to give it to them; is that right?

11           ANSWER: We offer other -- we offer  
12 third-party monitors on our web for sale.

13           QUESTION: But if the customer doesn't  
14 request a third-party monitor, you are going to provide  
15 them, as a default, the Dell-branded monitor, right?

16           ANSWER: I can't control, in general,  
17 what the salespeople are doing. Our goal ultimately,  
18 when we sell product, is to listen to the customer and  
19 sell them really what they want.

20           So if we are offering a Dell-branded  
21 product that meets their needs, then that is the one we  
22 want to sell to them. If they request features or  
23 functions that are available in a third-party monitor  
24 that are not available in a Dell monitor, the right  
25 thing for the salesperson to do is to sell that



1 third-party monitor or what the customer wants.

2 QUESTION: All else equal, you would sell  
3 a Dell-branded monitor before a non-Dell-branded  
4 monitor, right?

5 ANSWER: I believe that the Dell-branded  
6 products would be sold primarily.

7 QUESTION: And could you please read the  
8 first bullet point under margin on Page 3?

9 ANSWER: Dell-branded mix. Currently  
10 sell all Dell-branded peripherals for desktops --  
11 desktop notebooks. Always quote Dell-branded unless  
12 specifically asked to quote third-party equipment.

13 QUESTION: That's Dell's policy, right?

14 ANSWER: I am not aware of what this  
15 presentation comes from, and I'm not aware of a  
16 specifically written policy to that end elsewhere.

17 QUESTION: What is written here is no  
18 different really from what you just testified, which is  
19 all else equal, you will sell a Dell-branded product  
20 before you sell a non-branded -- Dell-branded product,  
21 correct?

22 ANSWER: It's -- the part I don't like  
23 about this is that it doesn't capture the customer needs  
24 aspect of what I said.

25 QUESTION: Well, it's right there. It

1 says if -- they're specifically asked to quote  
2 third-party equipment. So if the customer asks for  
3 third-party equipment, you will give them a quote,  
4 right?

5                   ANSWER: Oh, if they specifically ask for  
6 third-party equipment. But what's not captured here is  
7 the idea that if they are asking for a product of a  
8 certain feature and we -- the Dell-branded is only  
9 similar, that I would say that the salesperson should go  
10 to the third-party products.

11                   QUESTION: Assuming the features were the  
12 same -- I think you just said this; that if the features  
13 were the same, you would want the customer to buy a  
14 third-party stand with Dell-branded monitors as opposed  
15 to a multiscreen stand with other monitors attached to  
16 it, right?

17                   ANSWER: I think if the -- if it was more  
18 profitable to do so, then that would be the choice.

19                   QUESTION: For displays, how many of the  
20 Dell-branded products are basically made entirely by  
21 somebody else and then -- as you call it, OEM, and then  
22 the Dell brand goes on, and how many of them are those  
23 that Dell is more actively involved in, as you just  
24 described?

25                   ANSWER: At this time, our current

1 products, from what I understand, none of them are  
2 strictly OEM, Dell-branded someone else's products. We  
3 are involved with the engineering of them.

4 QUESTION: Where are they manufactured?

5 ANSWER: They're manufactured mostly in  
6 Taiwan and China.

7 QUESTION: The panel and technology  
8 provider is a third party, or is it Dell-owned?

9 ANSWER: It is a third-party.

10 QUESTION: After that there is, then, a  
11 factory that puts all the components together, and  
12 that's a third party that you were just describing; is  
13 that right?

14 ANSWER: Yes. That we call a system --  
15 it's a sort of a systems integrator that puts the parts  
16 together.

17 QUESTION: Those systems integrators are  
18 in Asia?

19 ANSWER: They are.

20 QUESTION: They are in Singapore? Is  
21 that what you said?

22 ANSWER: One of them, I know, is in  
23 China, and I believe the other one is in Taiwan or  
24 China.

25 QUESTION: If a monitor was purchased at

1 around the same time as the stand, one would think that  
2 the stand is being used for the monitor; is that right?

3 ANSWER: It's -- it's difficult to guess  
4 what the customer is doing with the products that they  
5 buy from us.

6 QUESTION: You're sitting here today as  
7 Dell's corporate representative unable to tell me and  
8 the jury whether, when a customer buys a stand at the  
9 monitor -- and a monitor at the same time, you don't  
10 know how they're using those two products?

11 ANSWER: It is -- it's difficult to  
12 guess, because our monitors generally come with stands.  
13 So that other mount could be used for an already  
14 existing monitor that they have.

15 QUESTION: Sitting here today, can you  
16 think of any other use for a multiscreen stand besides  
17 putting monitors on that stand?

18 ANSWER: No. I believe the multi-monitor  
19 stand is for putting monitors on it.

20 QUESTION: When Dell sells an LCD, it  
21 tries to sell a stand to go with it?

22 ANSWER: We sell a number of peripherals,  
23 and a more fully featured monitor stand is one of many  
24 peripherals that we offer to sell when someone buys a  
25 monitor that already has a stand.

1                   QUESTION: When Dell buys a third-party  
2 product, does it give the third-party notice of the  
3 amount of units Dell intends to sell over a certain time  
4 period in the future?

5                   ANSWER: It depends. We do have a  
6 forecasting mechanism or process at Dell for third-party  
7 products.

8                   QUESTION: Your best testimony, as we sit  
9 here today as Dell's corporate representative, is that  
10 you believe that Ergotron is on the forecast list,  
11 correct?

12                  ANSWER: I believe at -- either at this  
13 time or in the past, that Ergotron products have been on  
14 the forecasted list.

15                  QUESTION: Can you please tell us and the  
16 jury how long Dell will provide Ergotron forecasts for  
17 the future purchases of the all-in-one monitor and  
18 chassis stand?

19                  ANSWER: The document says Dell will  
20 provide Ergotron with a 12-month rolling forecast on a  
21 monthly basis.

22                  QUESTION: Have Dell or any of its  
23 customers ever complained about Ergotron's products?

24                  ANSWER: In my role, I do not get some of  
25 that or get that particular feedback.

1 QUESTION: As a corporate representative  
2 for Dell sitting here today, are you aware of any  
3 complaints that either Dell or its customers have had  
4 regarding Ergotron products?

5 ANSWER: No, I'm not aware of any.

6 QUESTION: Could you please tell me and  
7 the jury how many computers Dell sold to Merrill Lynch  
8 in this one purchase order?

9 ANSWER: Upon looking at the document  
10 more, I believe this is more of a receipt for a purchase  
11 order, but -- just to be clearer, according to this  
12 receipt, in Line 1, it says a quantity of 23,500 of what  
13 appears to be Dell GX260D desktop computers.

14 QUESTION: Can you please tell me and the  
15 jury how much Merrill Lynch paid Dell for those 23,500  
16 computers alone?

17 ANSWER: They paid in the -- under the  
18 cost center amount, \$16,920,000.

19 QUESTION: Merrill Lynch also bought  
20 23,500 DS 100 devices?

21 ANSWER: Line 2 indicates a quantity of  
22 23,500 desk stand 100 products were purchased.

23 QUESTION: Can you please tell me and the  
24 jury what Merrill Lynch paid for those 23,500 units?

25 ANSWER: According to a field indicated

1 here, cost center amount, it says \$2,820,000.

2 QUESTION: Can you please tell me and the  
3 jury how many monitors Merrill Lynch bought from Dell?

4 ANSWER: In Line 3, there's a quantity of  
5 47,000 products, which appears to be the Dell UltraSharp  
6 1702 flat panel.

7 QUESTION: That is a -- that is a  
8 Dell-branded monitor?

9 ANSWER: It says Dell UltraSharp 1702  
10 flat panel.

11 QUESTION: Yes or no, is it a  
12 Dell-branded monitor?

13 ANSWER: Yes.

14 QUESTION: Why do you think Merrill Lynch  
15 purchased 23,500 stands at the same time it purchased  
16 exactly double that amount of monitors?

17 ANSWER: It's difficult to say what  
18 they're going to do with the products.

19 QUESTION: You are really telling me and  
20 the jury under oath that you have absolutely no idea why  
21 Merrill Lynch would buy 23,500 stands at the exact same  
22 time it bought 47,000 monitors?

23 ANSWER: All of our Dell monitors include  
24 their own stands. So the Desk Stand 100 could be used  
25 for already existing monitors. I don't know.

1                   QUESTION: What is your best system as  
2 your personal -- in your personal capacity or in Dell's  
3 30(b)(6) capacity corporate representative, about why  
4 Merrill Lynch bought 23,500 stands at the same time it  
5 bought 47,000 units?

6                   Please tell us under oath what your best  
7 testimony is.

8                   ANSWER: It's impossible to know from  
9 this information what they did with the products.

10                  QUESTION: I just want to confirm for me  
11 and the jury that your testimony is that you have no  
12 idea -- that Dell has no idea why Merrill Lynch bought  
13 23,500 stands with the opportunity to put two monitors  
14 on each stand at the exact same time it bought 47,000  
15 monitors?

16                  ANSWER: They could do many things with  
17 those products.

18                  QUESTION: You're telling the jury that  
19 Dell has no idea about whether Merrill Lynch put those  
20 47,000 monitors on each of the two monitor heads on the  
21 DS 100?

22                  ANSWER: According to this information,  
23 it's impossible to tell.

24                  QUESTION: The jury will have to tell,  
25 correct?



1                   ANSWER: If -- if they're asked the  
2 question, I guess they will decide.

3                   QUESTION: Do you believe that a  
4 reasonable jury could conclude that Merrill Lynch was  
5 going to put the 47,000 monitors it bought on the 23,500  
6 stands that it bought at the exact same time in the  
7 exact same purchase order?

8                   ANSWER: That is one possible use of  
9 these products.

10                  QUESTION: I think you testified earlier  
11 that you can think of no other use for the monitor  
12 stand, besides putting monitors on them; is that right?

13                  ANSWER: At this time, I think that using  
14 them for what they are intended for is the best possible  
15 use.

16                  QUESTION: Using them for what they are  
17 intended for is to put monitors on them, correct?

18                  ANSWER: Yes.

19                  QUESTION: Mr. Santandrea, you would  
20 characterize Merrill Lynch as one of the biggest  
21 purchasers, if not the biggest purchaser, of Ergotron's  
22 stands?

23                  ANSWER: While I'm familiar with the  
24 spreadsheet, I didn't add up every -- every customer.

25                  QUESTION: Do you think that selling

1 38,169 units to one customer represents a large customer  
2 of both Dell and Ergotron?

3 ANSWER: It's difficult to categorize  
4 that as large.

5 QUESTION: What does the e-mail say?

6 ANSWER: In the body it says, Ann and  
7 Kip, per the e-mail below, we have a problem at Merrill  
8 Lynch. They have been a huge purchaser of the Ergotron  
9 product, and it does not appear that they are being  
10 taken care of.

11 QUESTION: Do you agree with that  
12 assessment from a Dell employee, sitting here as Dell's  
13 corporate representative?

14 ANSWER: It's difficult to say what this  
15 person means by huge.

16 QUESTION: Can you please read for the  
17 jury the subject of the e-mail?

18 ANSWER: The subject line is FW: Order  
19 for the 1,970 Dell GX620, and then in parentheses,  
20 defective Ergotron dual display stands.

21 QUESTION: You don't doubt, do you, that  
22 Merrill Lynch was complaining about Ergotron's defective  
23 dual display stands?

24 ANSWER: According to this document, I  
25 can't see that they were complaining.

1 QUESTION: Could you please read the  
2 third sentence?

3 ANSWER: There is an apparent defect with  
4 the stands where the mounting arm cannot tighten down  
5 enough to hold the monitors without sliding down.

6 QUESTION: You don't doubt, do you, that  
7 Merrill Lynch was complaining to Dell about Ergotron's,  
8 quote, defective stands?

9 ANSWER: The e-mail says that there is an  
10 apparent defect with the stands.

11 QUESTION: Do you see the e-mail from  
12 Emily Malek, dated Thursday, November 30th, 2006? Could  
13 you please read that e-mail aloud?

14 ANSWER: The e-mail says, I put overnight  
15 shipping on seven orders. If Merrill Lynch can have at  
16 least 300 to 600 by 12/11, we should be okay. If -- it  
17 says, MO can ship, great, but we need at least 300  
18 stands, 600 monitors. Let me know. I'm scared about  
19 Ergotron. They usually don't have much supply.

20 QUESTION: That's how Dell felt as of  
21 November 30th, 2006, correct?

22 ANSWER: I see that Emily Malek wrote the  
23 e-mail, and she has a Dell address.

24 QUESTION: Sitting here today as Dell's  
25 30(b)(6) corporate representative, is that how Dell felt

1 as of this time?

2 ANSWER: It looks like this is an e-mail  
3 that Emily wrote.

4 QUESTION: Besides this e-mail where  
5 Emily Malek states she is, quote, scared about Ergotron,  
6 they usually don't have much supply, correct?

7 ANSWER: The e-mail says, I'm scared  
8 about Ergotron.

9 QUESTION: You recall our discussion that  
10 Merrill Lynch paid Dell \$16,920,000 for the 23,500  
11 computers?

12 ANSWER: Yes, I recall.

13 QUESTION: Do you recall our discussion  
14 that Merrill Lynch paid Dell 2,820,000 for the 23,500  
15 DS 100 stands?

16 ANSWER: Yes I, recall.

17 QUESTION: What was the total amount in  
18 this one purchase order?

19 ANSWER: On the third page of Exhibit 17,  
20 at the top, I see a field that indicates PO amount, and  
21 it says \$33,493,520.

22 QUESTION: Didn't Dell advertise selling  
23 multiscreen stands and displays at the same time?

24 ANSWER: Yes. I recall seeing  
25 advertisements.

1                   QUESTION: You said a reasonable jury  
2 could conclude that the customer was going to use the  
3 standards to put the monitors bought in the same  
4 purchase order on at the same time, right?

5                   ANSWER: That's a possible conclusion.

6                   (End of video clip.)

7                   MR. TRIBBLE: Now, Your Honor, if it  
8 please the Court, we have the deposition of Shala  
9 Stevenson. She's a software peripheral representative  
10 of Dell. The running time on this is 4 minutes, 54  
11 seconds for Plaintiff and 55 seconds for Defendants.

12                  THE COURT: Okay. You may proceed.

13                  (Video playing.)

14                  QUESTION: Please state your name for the  
15 record.

16                  ANSWER: Shala Stephenson.

17                  QUESTION: Did you used to go by Shala  
18 Schwarze?

19                  ANSWER: Yes.

20                  QUESTION: What was your position in 2000  
21 and 2001 within Dell?

22                  ANSWER: Software and peripherals  
23 representative.

24                  QUESTION: So in 2000 and 2001, you were  
25 in software and peripheral sales; is that right?

1                   ANSWER: That's correct.

2                   QUESTION: During that time, you had  
3 interactions with Mass Multiples, correct?

4                   ANSWER: Correct.

5                   QUESTION: You received this e-mail  
6 chain, marked as Exhibit 1?

7                   ANSWER: By my name being on there, it  
8 looks like I did.

9                   QUESTION: Can you please read the e-mail  
10 that he sent you that's at the bottom of this first  
11 page?

12                  ANSWER: That's good news. However, I  
13 see that you guys are selling Ergotron mounts for the  
14 other panels. That is an infringement to our patent.

15                  QUESTION: Thank you.

16                  Do you recall what you did when you  
17 received this e-mail?

18                  ANSWER: I do not recall.

19                  QUESTION: During this timeframe, though,  
20 I'm talking about 2000 and 2001 when you received this  
21 e-mail, did you speak to anybody about the fact that  
22 Dell had just gotten an e-mail that it infringed Mass'  
23 patent?

24                  ANSWER: I don't recall.

25                  QUESTION: Mr. Stageman identified one

1 patent; is that right?

2 ANSWER: I don't remember.

3 QUESTION: You don't recall whether you  
4 followed up on anything about this e-mail, correct?

5 ANSWER: I don't remember thinking  
6 anything about it.

7 QUESTION: You recall just getting it and  
8 then not thinking about it; is that right?

9 ANSWER: Correct.

10 QUESTION: Did you tell anybody within  
11 Dell that Mass had a patent that covered selling  
12 Ergotron mounts for other panels?

13 ANSWER: I don't recall.

14 QUESTION: You do know that it was  
15 available to sell Ergotron mounts with Dell displays,  
16 correct?

17 You were aware at least as of August  
18 22nd, 2001 that that offering was accused by Mass of  
19 infringing its patent, right?

20 ANSWER: I was 21 years old. I don't  
21 think I thought a lot of it. I -- I don't think I  
22 thought anything of it. I was just trying to sell some  
23 product.

24 QUESTION: Ergotron and Dell product and  
25 Mass product, right?

1                   ANSWER: Any product.

2                   QUESTION: I want to make sure you answer  
3 my question.

4                   Regardless of your age, at least as of  
5 this date, you did know that Mass told you that selling  
6 Ergotron mounts with Dell displays infringed Mass'  
7 patent, correct?

8                   ANSWER: According to this e-mail, it  
9 looks like I was notified. I do not recall anything of  
10 that.

11                  QUESTION: And so going back to the first  
12 page of Exhibit 1, the e-mail from Eric Stageman to --  
13 to you --

14                  ANSWER: Uh-huh.

15                  QUESTION: -- does that e-mail specify  
16 any patent numbers?

17                  ANSWER: Not that I see, no.

18                  QUESTION: Does it identify any specific  
19 products, for example, by part number or model number?

20                  ANSWER: No.

21                  QUESTION: Do you remember having had any  
22 conversations with Mr. Stageman about patent  
23 infringement, other than what's reflected in this  
24 e-mail?

25                  ANSWER: Not at all.



1                   QUESTION: With respect to the exact  
2 words that you read, this is giving another solution  
3 besides selling Mass products, correct?

4                   ANSWER: That would be correct.

5                   QUESTION: Are you aware that you need  
6 permission from the patent holder to sell the product?

7                   ANSWER: I would not have been aware of  
8 that.

9                   QUESTION: You just went ahead and sold  
10 it anyway, right?

11                  ANSWER: I don't think I thought anything  
12 of it.

13                  QUESTION: You ignored the patent,  
14 correct?

15                  ANSWER: I wouldn't say that I ignored  
16 the patent. I would say I didn't think anything of it.

17                  QUESTION: You got the e-mail; you  
18 continued to sell the Ergotron stands plus the displays,  
19 correct?

20                  ANSWER: I didn't think anything of it.

21                  QUESTION: How is that not ignoring it?

22                  ANSWER: I guess it can be looked at as  
23 ignoring it, but I didn't think anything of it.

24                  QUESTION: Is it your job to make legal  
25 evaluations about patent infringement?

1                   ANSWER:   No.

2                   QUESTION:   Did Dell have a policy of --  
3 of when you got a notice of patent infringement to relay  
4 that on to legal counsel?

5                   ANSWER:   If there was, I wasn't aware of  
6 one.

7                   QUESTION:   So you weren't aware of any  
8 internal procedures where if you got a notice of patent  
9 infringement, you would relay that on, correct?

10                  ANSWER:   Correct.

11                  (End of video clip.)

12                  MR. TRIBBLE:   Your Honor, we now have  
13 about an eight-minute video from Kevin Paulson. He was  
14 a product manager for flat panels at Ergotron.

15                  Plaintiffs' running time is 8 minutes;  
16 Defendants' running time is 6 seconds.

17                  Oh, and I believe after this first clip,  
18 the Defendants have their own clip that they want to  
19 play, which is 2 minutes, 57 seconds.

20                  THE COURT:   All right. Proceed.

21                  (Video playing.)

22                  QUESTION:   Could you please state your  
23 full name for the record.

24                  ANSWER:   My name is Kevin J. Paulson.

25                  QUESTION:   You work for Ergotron?

1                   ANSWER: Yes, I do.

2                   QUESTION: When you were the product  
3 manager for flat panel products, were you involved in  
4 developing what became the DS 100 line?

5                   ANSWER: Yes, I was.

6                   QUESTION: Can you recall when you  
7 developed the DS 100?

8                   ANSWER: Yes.

9                   QUESTION: When was that?

10                  ANSWER: We began development of that  
11 shortly after I arrived. That may have already begun  
12 development before I arrived, so in 1999.

13                  QUESTION: Were you aware of the  
14 competition in the flat panel market for the DS 100 when  
15 you started developing the product?

16                  ANSWER: Yes.

17                  QUESTION: What competition were you  
18 aware of in 1999?

19                  ANSWER: Specifically by name?

20                  QUESTION: Yeah.

21                  ANSWER: I guess I don't understand what  
22 you're asking.

23                  QUESTION: Specifically, by name what  
24 competition were you aware of?

25                  ANSWER: Well, there were multiple

1 competitors. I could list several, but --

2 QUESTION: Were you aware of Mass  
3 Multiples?

4 ANSWER: Yes.

5 QUESTION: Was the DS 100 the first flat  
6 panel dual display product that Ergotron offered?

7 ANSWER: Yes. Yes, it was.

8 QUESTION: How did you attempt to sell  
9 the DS 100? How did you attempt to break into the  
10 market?

11 ANSWER: The DS 100 was developed through  
12 customer feedback, so breaking into the market involved  
13 essentially developing prototypes, showing those  
14 prototypes to customers, collecting feedback,  
15 redesigning where necessary, tweaking the prototypes.

16 QUESTION: You developed the product  
17 based upon the customer feedback in part?

18 ANSWER: Yes.

19 QUESTION: For the DS 100, you wouldn't  
20 just show them the stand; you would also put monitors on  
21 the stand, or what would you do?

22 ANSWER: We would do both, show it with  
23 or without. It depended on the circumstance.

24 QUESTION: The customers understood that  
25 the purpose of the stand was to put monitors on it; is

1 that right?

2 ANSWER: I assume so. It's difficult for  
3 me to know exactly what they understood.

4 QUESTION: That was your assumption at  
5 least, right?

6 ANSWER: Yes.

7 QUESTION: Do you recognize this  
8 document?

9 ANSWER: Yes, I do.

10 QUESTION: This was the price list for  
11 the DS 100 line as of September 1, 2000; is that right?

12 ANSWER: Yes.

13 QUESTION: You had sent these products by  
14 essentially taking your cost and marking it up by  
15 between three and a half and four times; is that right?

16 ANSWER: Essentially.

17 QUESTION: You knew that Merrill Lynch  
18 was buying a lot of DS 100 product, correct?

19 ANSWER: Well, I knew that Merrill Lynch  
20 and other customers purchased Ergotron product, yes.

21 QUESTION: You were aware that in  
22 2003/2004, there was a major ramp-up of the number of  
23 units sold per year by Ergotron for the DS 100 line?

24 ANSWER: That may be.

25 QUESTION: You were able to successfully

1 ramp-up from a couple thousand units per year to tens of  
2 thousands of units per year?

3 ANSWER: Eventually.

4 QUESTION: The costs came down as you  
5 ramped up?

6 ANSWER: Yes.

7 QUESTION: Was the DS 100 the only dual  
8 display stand that you sold, starting from 1999 through  
9 2006?

10 ANSWER: The only dual display stand that  
11 Ergotron sold?

12 QUESTION: Yes.

13 ANSWER: We had -- yes, as I recall, that  
14 was the only stand.

15 QUESTION: Did you attend any trade shows  
16 where there would be multidisplay units on sale?

17 ANSWER: Yes.

18 QUESTION: What trade shows did you  
19 attend?

20 ANSWER: I attended a number of trade  
21 shows. SIA was one that was held in New York. I don't  
22 recall the names of all the shows. That was one of the  
23 most prominent shows.

24 QUESTION: You would often see Mass  
25 Multiples' products at these trade shows?

1                   ANSWER: I wouldn't say often.

2                   QUESTION: On occasion at least you  
3 would?

4                   ANSWER: Yes, on occasion you would see  
5 them at trade shows.

6                   QUESTION: You saw them at the SIA show  
7 you referenced, right?

8                   ANSWER: Again, I don't recall. I don't  
9 recall which trade shows and which products were --  
10 which competitors were present.

11                  QUESTION: Exhibit 5. Let me know when  
12 you are ready.

13                  ANSWER: Okay.

14                  QUESTION: You attended this show, right?

15                  ANSWER: Yes, I did.

16                  QUESTION: We already talked about Mary  
17 Beth Martin. Did she attend many shows with you?

18                  ANSWER: She attended -- she attended  
19 several shows with me, yes.

20                  QUESTION: Saeb Asamarai, am I saying  
21 that right?

22                  ANSWER: Saeb Asamarai (pronouncing).

23                  QUESTION: Saeb Asamarai?

24                  ANSWER: Yes.

25                  QUESTION: Who is he?

1                   ANSWER: He is one of our design  
2 engineers.

3                   QUESTION: Is he still employed with the  
4 company?

5                   ANSWER: Yes, he is.

6                   QUESTION: He would go with you to trade  
7 shows as well?

8                   ANSWER: We would try to bring  
9 development engineers to trade shows if we could.

10                  QUESTION: For what purpose?

11                  ANSWER: To help them understand customer  
12 feedback.

13                  QUESTION: Did you ever attend the IT for  
14 Wall Street show?

15                  ANSWER: I think so, yes.

16                  QUESTION: Did you think that Mass  
17 Multiples had a nice look about the product?

18                  ANSWER: Did I think they had a nice  
19 look?

20                  QUESTION: Yeah.

21                  ANSWER: I guess I didn't consider that,  
22 really. I don't know that I -- I don't recall  
23 discussing aesthetics.

24                  QUESTION: Could you turn to 60158?

25                  ANSWER: Okay.



1 QUESTION: You see it says Mass Multiples  
2 strengths, weaknesses?

3 ANSWER: Oh, yes, I see that.

4 QUESTION: Listed under the strengths is  
5 aesthetics, right?

6 ANSWER: Yes, it is.

7 QUESTION: Also listed under the  
8 strengths is various options. Do you see that?

9 ANSWER: I do see that.

10 QUESTION: Mr. Paulson, as part of your  
11 job responsibilities as product manager for flat panel  
12 products, you would also send out product bulletins  
13 whenever there was a product defect or a change in lead  
14 time in the product, correct?

15 ANSWER: Yes.

16 QUESTION: That would happen on occasion,  
17 correct?

18 ANSWER: Yes, on occasion.

19 QUESTION: You don't think it's abnormal  
20 for the product to occasionally have problems with  
21 defects or lead time issues, correct?

22 ANSWER: No. I think all products have  
23 issues of one sort or another that need to be  
24 communicated to the sales force.

25 QUESTION: There were times where the

1 lead time to the customer was delayed, correct?

2 ANSWER: On Ergotron products?

3 QUESTION: Yeah.

4 ANSWER: Yes.

5 QUESTION: On the DS 100?

6 ANSWER: Probably.

7 (End of video clip.)

8 MR. TRIBBLE: I think, Your Honor, we can  
9 raise the lights.

10 MS. FRIEDEMANN: No, we have a brief  
11 video that we would like to present now, Your Honor.

12 It's 2 minutes and 57 seconds.

13 THE COURT: All right.

14 (Video playing.)

15 QUESTION: Why did you decide to enter --  
16 strike that.

17 Why did Ergotron decide to enter the flat  
18 panel dual display market?

19 ANSWER: Well, that decision was made  
20 before my arrival. When I arrived, we were already in  
21 the market, so...

22 QUESTION: Do you know why Ergotron  
23 decided to enter the flat panel dual display market?

24 ANSWER: No. I mean, as I said, that  
25 decision was made prior to my arriving at the company,

1 so exactly what went into it, I -- I'm not sure.

2 QUESTION: Were you involved in the  
3 purchase by Merrill Lynch through Dell of the DS 100  
4 line of products?

5 ANSWER: No, I was not.

6 QUESTION: I think -- I think we talked  
7 about this earlier. You saw Mass Multiples as one of  
8 Ergotron's competitors, right?

9 ANSWER: Yes. We -- yes, they were  
10 considered a competitor, a minor competitor.

11 QUESTION: You studied their device and  
12 analyzed it?

13 ANSWER: I did not.

14 QUESTION: Can you turn to 60140?

15 ANSWER: Okay.

16 QUESTION: Who is Dan Hallberg?

17 ANSWER: Dan Hallberg is an employee of  
18 Ergotron.

19 QUESTION: This presentation and others  
20 in this -- Tabs 9, 10, and 11 -- were geared towards  
21 convincing customers to attach a flat panel monitor to  
22 these arms, right?

23 ANSWER: No, that's not right. They  
24 were -- they were geared towards helping our sales  
25 force.

1 QUESTION: Sell the devices?

2 ANSWER: Yes.

3 QUESTION: A key component of selling the  
4 devices is eventually having a monitor to attach the  
5 devices to, right?

6 ANSWER: Well, I don't know if I would  
7 say eventually. I mean, very often, the monitors were  
8 in place, and we were brought in after the fact.

9 QUESTION: That's not consistent with  
10 what this presentation says, is it?

11 ANSWER: This specific presentation by  
12 Dan Hallberg?

13 QUESTION: Yeah.

14 ANSWER: Yes, I think it is. There's a  
15 bullet point which states, Can sell arms where flat  
16 panel monitors are found, indicating those flat panel  
17 monitors would already be in place.

18 (End of video clip.)

19 MR. TRIBBLE: Is that it?

20 I think now we can turn the lights on.

21 THE COURT: All right.

22 MR. TRIBBLE: Your Honor, Plaintiffs  
23 would call Dr. Ed Akin to the stand.

24 THE COURT: Dr. Akin.

25 MR. TRIBBLE: Mr. Nelson will conduct

1 this examination.

2 THE COURT: All right. Were you sworn,  
3 Dr. Akin?

4 THE WITNESS: No, sir.

5 THE COURT: All right. If you will raise  
6 your right hand.

7 (Witness sworn.)

8 THE COURT: All right. Have a seat right  
9 up here, please.

10 MR. NELSON: If it please the Court, Your  
11 Honor, we have notebooks -- for counsel -- of exhibits  
12 and for the Court.

13 MR. TRIBBLE: Your Honor, may I approach?

14 THE COURT: Yes, you may.

15 MR. TRIBBLE: I only have one copy.

16 Your Honor, we do have one more color  
17 version of the presentation.

18 THE COURT: All right. You may proceed.

19 MR. NELSON: Thank you, Your Honor.

20 JOHN EDWARD AKIN, PLAINTIFF'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. NELSON:

23 Q. Could you please state your name for the  
24 record.

25 A. John Edward Akin, and I go by Ed.

1 Q. Dr. Akin, what is your occupation?

2 A. I'm a professor at Rice University in  
3 Houston, Texas.

4 MR. NELSON: Could we please put up his  
5 resume, please? And let's just zoom in.

6 Q. (By Mr. Nelson) Is this your resume,  
7 Dr. Akin?

8 A. Yes, sir.

9 Q. And let's just zoom on your academic title.  
10 Could you please read for the jury your positions that  
11 you have?

12 A. I'm a professor of mechanical engineering,  
13 and I also have a joint appointment as a professor of  
14 computational and applied mathematics.

15 Q. Thank you.

16 And let's drop down to your educational  
17 experience.

18 A. All right, sir.

19 Q. Could you please tell the jury your  
20 educational experience.

21 A. Yes. I got a bachelor's degree in civil  
22 engineering and a master's degree in engineering  
23 mechanics from Tennessee Tech, and I received a Ph.D. in  
24 engineering mechanics from Virginia Tech.

25 Q. And, Dr. Akin, do you have any honors?

1 A. Yes, sir, I have a few.

2 Q. Please tell the jury what those are.

3 A. I have been elected to be a fellow of the  
4 American Society of Mechanical Engineers.

5 Q. Well, let me stop you there. What does it  
6 mean to be elected as a fellow?

7 A. One starts off as a member in the society,  
8 and then as you serve that society in various ways in  
9 committees and so forth, you are nominated to be  
10 elevated to a position of a fellow, and eventually, one  
11 gets elected to that position.

12 Q. And what are some of your other honors?

13 A. I'm on the Editorial Board of the Journal for  
14 Engineering Computations, and I've been listed in some  
15 of the Who's Who type publications.

16 Q. And let's please go to see what members of  
17 professional and technical societies you're a part of.

18 A. Yes, sir. I belong as a fellow to the  
19 American Society of Mechanical Engineers and am a member  
20 of the other societies, the American Society of Civil  
21 Engineers, the American Society for Engineering  
22 Education, the Society for Petroleum Engineers, and the  
23 U.S. Association for Computational Mechanics.

24 Q. Dr. Akin, are you a member of any  
25 professional review boards that review the work of other

1 scholars in the field to determine whether they're  
2 appropriate for publication?

3 A. Yes, sir.

4 Q. And what are those?

5 A. Well, the most recent ones are listed here.

6 I mentioned I was on the Editorial Board of the Journal  
7 of Engineering Computations. I reviewed for the Journal  
8 of Advances in Engineering Software.

9 I have reviewed for the American Society of  
10 Mechanical Engineering Journal of Applied Mechanics;  
11 also for the International Journal of Numerical Methods  
12 for Engineering; the American Society of Civil  
13 Engineering Journal for Engineering Mechanics;  
14 Communications and Applied Numerical Methods; the  
15 Computational Physics.

16 And then I also reviewed proposals for the  
17 National Science Foundation as to whether they should  
18 reward proposals or fund proposals.

19 Q. Thank you.

20 Let's go to the second page, please, and  
21 let's go to where you are an engineer at and where  
22 you're registered.

23 A. Yes.

24 Q. Are you a registered engineer, professional  
25 engineer?



1           A.       Yes. I'm registered in the states of Texas,  
2 Arkansas, and Tennessee.

3           Q.       Thank you.

4                   And, Dr. Akin, have you published any  
5 books -- let's actually go to the third page first. And  
6 are these listed in reverse chronological order here?

7           A.       Yes, they are.

8           Q.       And what is the first book that you published  
9 that -- under No. 1?

10          A.       Well, that's one that I actually edited  
11 instead of authoring it. It was done for the American  
12 Society of Mechanical Engineers, and it dealt with  
13 computational methods for fusion energy research.

14          Q.       Okay. And can you just briefly describe what  
15 fusion energy research -- what that was about.

16          A.       In that timeframe, we -- in 1978, fusion  
17 energy was thought to be the way of the future for  
18 energy, that by the year 2000, we would basically have  
19 unlimited free energy through this approach.

20                   And at this date, they're still saying, in  
21 about 30 years from now, we'll have wide free energy  
22 from this approach.

23          Q.       Okay.

24          A.       So it was quite exciting at the time.

25          Q.       Let's go to No. 4 on that. What is that

1 book?

2 A. That book is a text on computer-assisted  
3 mechanical design.

4 Q. Is that this book right here (indicating)?

5 A. It is, sir.

6 Q. Okay. And let's just go to the last one that  
7 you've written, No. 8 -- No. 7 and 8. Are you still  
8 publishing and writing books?

9 A. Yes, sir. The last one that I wrote was on  
10 carrying out finite element analysis with error  
11 estimators so they can automatically correct themselves.

12 And then I have one in progress for theory  
13 and applications of finite element analysis software.

14 Q. Thank you, Dr. Akin.

15 MR. NELSON: Let's go to the next -- or  
16 actually, go back to the following page, Page 3.

17 Q. (By Mr. Nelson) Dr. Akin, are you the holder  
18 of any patents?

19 A. Yes, sir.

20 Q. And approximately how many patents do you  
21 have?

22 A. I have five U.S. patents and two foreign  
23 patents.

24 Q. Thank you.

25 And what do those patents concern, generally?

1           A.       They're generally a patent that I have for  
2 allowing the drilling of oil wells in a faster manner.

3           Q.       Thank you.

4                   And it looks like Pages 3 through 11 really  
5 go through the 126 articles that you've written. Let's  
6 just start at the last one in time, so let's go back to  
7 Page 3 and see -- just tell the jury maybe what that  
8 last one that you've published was, that No. 126.

9           A.       Well, the last one was sort of a survey  
10 article. It was prepared in honor of Professor Tinsley  
11 Oden at The University of Texas on the event of his 70th  
12 year, recognizing and outlining his significant  
13 contributions in the field of mechanics.

14                   And we've been friends for 40 years, and I  
15 wanted to take part in recognizing his outstanding work  
16 there at the University of Texas.

17           Q.       And, Dr. Akin, let's go to your university  
18 service. Have you served -- that's the last page of the  
19 document.

20           A.       Yes, sir.

21           Q.       Have you served in any capacity or been  
22 elected by the faculty in any capacity at Rice  
23 University?

24           A.       Well, yes. In 2004, I was elected as speaker  
25 of the faculty, which is the official representative of

1 the entire Rice University faculty --

2 Q. Well, could you just get into a little more  
3 detail about what you do and your responsibilities as  
4 speaker of the faculty?

5 A. As speaker of the faculty, I am the official  
6 representative to the press, to the administration, to  
7 the president, to the Board of Directors, and of course,  
8 I have to represent the interest of the faculty.

9 Another elected position was -- we notice on  
10 the second line there, for 13 years, I was elected to  
11 the committee that recommended to the president which  
12 individuals at the university are to be awarded tenure.

13 Q. Thank you.

14 And did you ever serve as chairman of the  
15 Mechanical Engineering Department at Rice University?

16 A. Yes. Over a period of about six years, I  
17 served as chairman, and I also served as associate  
18 chairman for, looks like, another six years.

19 Q. Okay. And that's 1986 to 1991, was your  
20 first tenure as chairman; is that right?

21 A. Yes, sir.

22 MR. NELSON: Yeah. There we go.  
23 Thank you.

24 Q. (By Mr. Nelson) And, Dr. Akin, let's -- you  
25 also have -- do consulting and engineering work on the

1 side?

2 A. Yes. As a registered engineer, I try to  
3 bring practical experience to the university.

4 Q. And let's just go down to the first one,  
5 1966. What was your first either consulting engineering  
6 experience or job? What were you doing there?

7 A. Well, that was -- I was employed as an  
8 aerospace engineer at the National Aeronautics and Space  
9 Administration in Huntsville, Alabama, for the Saturn  
10 Moon Rocket Project.

11 Q. Thank you.

12 And let's go to the next one up, 1968 to  
13 1976. And then actually, 1976 to 1981, it says you were  
14 working at Oakridge National Laboratory. Can you just  
15 explain to the jury what you were doing there.

16 A. Well, the first one, the Development  
17 Division, is essentially of the Weapons Division. I was  
18 doing mechanical design of components for nuclear  
19 weapons, which is, of course, secret.

20 The other period was when I was working with  
21 the Fusion Energy Group where we hoped to find,  
22 basically, unlimited energy for the nation.

23 Q. And, Dr. Akin --

24 MR. NELSON: Let's just go up a little  
25 bit.

1 Q. (By mr. Nelson) It says from, it looks like,  
2 1986 to 1991, and then again, 1991 through 1997, you  
3 were working at The University of Texas Health Science  
4 Center in Houston.

5 Could you just explain your work there.

6 A. Yes. I had a joint appointment with the  
7 Orthopedic Department at The University of Texas. We  
8 were working with the orthopedic surgeons doing the  
9 mechanical design of artificial hip joints.

10 Q. Thank you.

11 And this also says that over the course of  
12 your career, you've served as an expert witness for  
13 various law firms. Have you been hired here as an  
14 independent expert by the Plaintiffs in this case?

15 A. I have.

16 Q. And, Dr. Akin, have you served on either side  
17 in patent infringement cases before?

18 A. Yes, I have.

19 Q. Dr. Akin, have you ever served as an expert  
20 witness for Dell in a patent infringement case?

21 A. Yes, I have.

22 Q. What was that case about?

23 A. That case was about support systems for  
24 single monitors.

25 Q. Thank you.

1                   And did Dell rely on your opinion in that  
2 case?

3           A.     I believe they did.

4           Q.     Thank you.

5                   Did you give a deposition or give testimony  
6 on behalf of Dell in that case?

7           A.     I did.

8           Q.     Thank you.

9                   Okay. Dr. Akin, have you been able to  
10 examine the devices accused of infringement in this  
11 case?

12          A.     I have.

13          Q.     And what were you asked to do?

14          A.     I was asked to examine the accused devices,  
15 the DS 100 dual, the DS 100 quad horizontal, and the LX  
16 dual, to determine whether or not they infringed the  
17 Claims 16 and 17 of the '978 patent.

18          Q.     And, Dr. Akin, we're going to get into great  
19 detail on this shortly, but in general, can you please  
20 tell the jury your conclusions you reached with respect  
21 to whether the DS 100 infringes both Claim 16 and  
22 Claim 17 of the '978 patent?

23          A.     When combined with the pair of displays, it  
24 is my opinion that it does infringe Claim 16.

25          Q.     And what about the DS 100 quad? What is your

1 opinion with respect to whether the DS 100 quad  
2 infringes Claims 16 and 17 of the '978 patent?

3 A. I think I didn't finish answering your first  
4 question.

5 Q. Oh, I'm sorry. I didn't mean to interrupt.

6 A. It also infringes -- the DS 100 dual  
7 infringes Claim 17 as well.

8 Q. Okay.

9 A. Yes. Likewise, in my opinion, the DS 100  
10 quad horizontal infringes Claims 16 and 17 of the '978  
11 patent.

12 Q. And with respect to the LX device accused of  
13 infringement here, what were your conclusions with  
14 respect to whether the Ergotron LX device infringes  
15 Claim 16 and Claim 17 of the '978 patent?

16 A. In my opinion, it also infringed both  
17 Claims 16 and 17 of the '978 patent.

18 Q. And, Dr. Akin, with respect to all three of  
19 those devices, did you reach an opinion whether the  
20 stands alone were contributorially and directly  
21 infringing the '978 patent for those two claims?

22 A. Yes. But I should have also mentioned that  
23 I -- my finding was when the displays are present.  
24 But in answer to your last question, yes, they also  
25 infringe indirectly.



1 Q. And, Dr. Akin, did you reach a conclusion  
2 with respect to whether these stands are an inducement  
3 to infringe with respect to the '978 patent, Claims 16  
4 and 17?

5 A. Yes. I found that they induced others to  
6 infringe.

7 Q. And, Dr. Akin, other than the infringement  
8 issues, were you asked to do any other type of review in  
9 this case?

10 A. Yes. I was asked to look at evidence  
11 presented by the Defendants that claim to show that the  
12 '978 patent was invalid.

13 Q. And I think you're going to be back on the  
14 stand in a few days after the Defendants put on their  
15 case, but just briefly, can you tell the jury, did you  
16 form any opinions about whether the Defendants'  
17 claims -- whether the '978 patent would be invalid under  
18 their theory?

19 A. Yes. I examined the Defendants' claims, and  
20 I found that the '978 patent was not invalid.

21 Q. Thank you.

22 Before we get into the specifics of the  
23 actual units, I'm hoping you can just give all of us a  
24 little brief overview about the scientific principles  
25 and technology that you're going to be discussing for

1 about the next hour or so.

2           What scientific principles did you consider  
3 in reaching your opinions?

4           A.     I had to consider forces and torques and  
5 pressures and friction.

6           MR. NELSON: And let's go to the first  
7 slide.

8           Q.     (By Mr. Nelson) What are we looking at here?

9           A.     Well, a force is a load acting at a  
10 particular direction, in this case, indicated by the  
11 arrow F that represents a load, in this example, being  
12 applied to the end of a wrench that's tightening the  
13 nut.

14          Q.     Okay. And can you please describe just  
15 generally what the force is here?

16          A.     The force in this case would be the load  
17 coming from the individual's hand.

18          Q.     And what do we have here under T? What is  
19 that?

20          A.     Well, the force has a labor arm, as I've  
21 illustrated in black here as length L, and the force  
22 acting with that lever arm creates a torque or a turning  
23 effect, and that's generally represented by a curved  
24 arrow about the center where the torque is applied or  
25 where the rotation is tending to occur.

1 Q. And just what's -- it might be obvious, but  
2 what's going on here in this picture?

3 A. In this case, we've seen that the load has  
4 been applied with a lever arm, and it has accomplished a  
5 rotation of the nut in some fashion to tighten it.

6 Q. What does the force  $F$  do?

7 A. The force  $F$ ?

8 Q. Right here (indicating).

9 A. Yes. It applies a load, in this case,  
10 perpendicular to the wrench.

11 Q. Okay. And you also mentioned -- I think  
12 there's a session of pressure as a principle. Can you  
13 explain what pressure means and how it relates to this  
14 case?

15 A. Yes. When two objects are in contact, they  
16 develop a pressure between them that is distributed --  
17 distributed over the contact area and acts perpendicular  
18 to the surface where they're contacting.

19 In this example, we see a box sitting on the  
20 floor, so the weight of the box has been distributed  
21 over its bottom contact area to form a pressure,  $P$  as  
22 it's shown here, and then the floor responds with an  
23 equal and opposite pressure at that contact surface.

24 Q. And there's also, I think, friction. And  
25 what do you mean by friction here?

1           A.       Well, when -- when you have two objects  
2 pressed together and contact to develop a pressure, it  
3 is also possible for a tangential or a parallel force to  
4 resist that -- the resisting motion parallel to the  
5 surface.

6                   In this example, you have a box sitting on  
7 the floor, and you can push on it, but that horizontal  
8 friction force develops over the contact area and  
9 resists up to a point. And that's important.

10          Q.       Okay. And then what happens -- what's next?  
11 I mean, how do you overcome that?

12          A.       As you increase the force in this case, you  
13 would eventually be able to overcome the friction, and  
14 then you would see the block start to move.

15          Q.       Okay.

16          A.       So in this illustration, we're seeing that  
17 the pressure is perpendicular to the contact surface and  
18 that the friction is parallel to it.

19          Q.       And how do these principles apply to this  
20 case?

21          A.       Well, in this case, I had to look at  
22 connections and joints involving the various accused  
23 devices and the patented devices, and I had to use these  
24 concepts in reaching my opinions.

25          Q.       And before we get into the specific analysis

1 of the devices, are you familiar with the term a person  
2 of ordinary skill in the field of invention?

3 A. Yes, sir.

4 Q. What is that?

5 A. A person of ordinary skill in the field is a  
6 hypothetical person created by the courts. It's a  
7 person that thinks in a conventional way in this  
8 particular field at the time of the invention.

9 Q. And who is the inventor of the '978 patent at  
10 issue in this case?

11 A. The inventor is Mr. Jerry Moscovitch.

12 Q. Did you consider Mr. Moscovitch's level of  
13 skill in reaching your opinion about an ordinary level  
14 of skill?

15 A. No, sir.

16 Q. And why not?

17 A. Because the Court deems an inventor to be  
18 higher -- have a higher skill than a person of ordinary  
19 skill.

20 Q. Okay. Did you speak with Mr. Moscovitch  
21 about what the level of ordinary skill would be for a  
22 person in this area?

23 A. I did speak to him to try and assess the  
24 types of employees that he likes to hire in his company.

25 Q. And what did he tell you?

1           A.       He told me he liked to hire persons with a  
2 bachelor's degree in industrial design or mechanical  
3 engineering with zero to three years of experience.

4           Q.       Did you review any other documents or  
5 testimony to reach your conclusion about what a person  
6 of ordinary skill is in this area?

7           A.       Yes. I also reviewed the deposition  
8 testimony of their chief product development person for  
9 another company that makes competing support stands.

10          Q.       Okay. And what did you conclude from that?

11          A.       From that testimony, Mr. Durkee, I determined  
12 that he liked to hire mechanical engineers with a  
13 bachelor's degree.

14          Q.       And, Dr. Akin, did you consider anything else  
15 in reaching your opinion about a person of ordinary  
16 skill in this area?

17          A.       Well, I had to consider the level of  
18 technology that's associated with this patent, and then,  
19 of course, I had to look at the patent itself.

20          Q.       Okay. I want to show you what's been marked  
21 as Plaintiff's Exhibit 928, which is -- should be the  
22 patent. Do you know what this is?

23          A.       This is a certified copy of the '978 patent.

24          Q.       And in general, do you know what this patent  
25 relates to?

1           A.       Yes. It relates to a display system for  
2 use -- multiple display system for use by a single user.

3                   MR. NELSON: And let's turn to the last  
4 page of the document.

5           A.       Yes, sir.

6                   MR. NELSON: And let's blow up --

7           Q.       (By Mr. Nelson) What are we looking at here,  
8 Dr. Akin?

9           A.       Here we're seeing the last two claims out of  
10 this patent, Claims 16 and 17.

11          Q.       Okay. And what is your knowledge about  
12 whether Claims 16 and 17 are the asserted claims in this  
13 case?

14          A.       My understanding is that they are the only  
15 two of the 17 that are asserted in this case.

16          Q.       Okay. And we have on the board behind  
17 Mr. Carroll over there Claim 16, and Claim 17 is behind  
18 it. We'll get to that in a second.

19          A.       All right, sir.

20          Q.       And, Dr. Akin, are you aware of this Court's  
21 claim construction in this case?

22          A.       I am.

23          Q.       Did you use this Court's claim construction  
24 that the jury has in reaching your analysis about  
25 whether the DS 100 infringes these two claims?

1           A.       Yes, I did.

2           Q.       Okay.

3                   MR. NELSON:   So let's go now, then, to  
4 maybe the DS 100 dual, and let's put the DS 100 dual on  
5 there.

6                   May it please the Court.   May I ask  
7 permission for Dr. Akin to come down and use the devices  
8 to --

9                   THE COURT:   Yes, that will be fine.

10                  MR. NELSON:   Okay.

11           Q.       (By Mr. Nelson) And, Dr. Akin, in your  
12 opinion, does the DS 100 dual, is this DS 100 dual a  
13 display system?

14           A.       It is.

15           Q.       Okay.   And you can go over there to the  
16 display system right here.   That's the first part of it;  
17 is that right?

18           A.       Yes, sir.

19           Q.       Okay.   In your opinion, Dr. Akin, is the DS  
20 100 designed for use with monitors?

21           A.       Yes, it is, in my opinion, designed for use  
22 with monitors.

23           Q.       Okay.   Can you please explain why?

24           A.       Well, yes.

25                   Well, as you can see, the mounting plates



1 that are supplied as a part of the arm are mounting  
2 plates through a part of an industry standard for being  
3 attached to the displays. And we see that there are two  
4 of those present.

5 Q. Okay. And did you consider anything else in  
6 forming your conclusion that the purpose of the stand is  
7 to mount monitors?

8 A. Well, yes. I also considered the  
9 documentation, in particular, the instruction manual,  
10 the advertisements, and the sworn deposition  
11 testimony of the Defendants' employees.

12 Q. Okay.

13 MR. NELSON: Let's go to Plaintiff's  
14 Exhibit 351.

15 Q. (By Mr. Nelson) Do you recognize this,  
16 Dr. Akin?

17 A. Yes, I do. This is the instruction manual  
18 for the DS 100 series horizontal dual-monitor stand.

19 Q. And did you review this document in analyzing  
20 whether the DS 100 is a display system?

21 A. I did. We see in this top figure, for  
22 example, that it shows quite clearly that the intention  
23 is to mount two displays to the mounting plates that I  
24 identified earlier on the -- that are associated with  
25 the stand.

1 MR. NELSON: And let's just zoom in maybe  
2 on the picture right there of the front of the  
3 installation manual.

4 Q. (By Mr. Nelson) What does this show?

5 A. Well, this shows a silhouette or a  
6 see-through version of what we have here, two displays  
7 attached to the mounting plates on the arm of the DS 100  
8 stand.

9 Q. And by the way, Dr. Akin, are you aware of  
10 which party in this case produced this installation  
11 manual?

12 A. Yes. I can tell from the number in the lower  
13 right corner that begins with the letters DEL, that this  
14 was produced by the Dell Corporation.

15 Q. Okay.

16 MR. NELSON: And let's go to Plaintiff's  
17 Exhibit 582.

18 Q. (By Mr. Nelson) What is this, Dr. Akin? What  
19 are we looking at here?

20 A. This is an advertisement by Ergotron showing  
21 the stand being used with two displays and offering to  
22 sell it in that fashion.

23 Q. And is it being used with any of the other  
24 Defendants, as an advertisement for any of the other  
25 Defendants?

1 MR. NELSON: Let's zoom out of the  
2 document.

3 Q. (By Mr. Nelson) It looks like it's just --  
4 right now, that's just Ergotron alone, correct?

5 A. I think that's just Ergotron alone.

6 Q. Okay.

7 MR. NELSON: Let's go to Plaintiff's  
8 Exhibit 812.

9 Q. (By Mr. Nelson) What have we got here?

10 A. Well, this is an Ergotron advertisement in  
11 combination with Dell where we see, again, they're  
12 presenting the stand with the two monitors attached and  
13 offering to sell it in that configuration.

14 Q. Okay.

15 MR. NELSON: Let's zoom out to the  
16 document.

17 Q. (By Mr. Nelson) Are you aware, Dr. Akin --

18 MR. NELSON: Let's zoom in on the margin  
19 for pocket the different right there. Well, no. Pocket  
20 the difference right below it. Yeah. Thank you.

21 And -- and -- I'm sorry. That entire --  
22 yeah. There we go.

23 Q. (By Mr. Nelson) And, Dr. Akin, are you aware  
24 of what that says here?

25 A. Well, I'll have to read it, sir.

1 Q. Yeah.

2 A. It's apparently saying that you may save \$734  
3 by purchasing this combined infringing unit.

4 Q. Yeah. Okay.

5 And it says you make, correct? That's the  
6 extra --

7 A. You make.

8 Q. Yeah. Okay.

9 MR. NELSON: And let's please go to  
10 Plaintiff's Exhibit 593.

11 A. Yes, sir.

12 Q. (By Mr. Nelson) And, Dr. Akin, is this --  
13 what is this advertisement?

14 A. Well, once again, we see this is a joint  
15 advertisement by Ergotron and CDW showing the displays  
16 being mounted with the stand and offering to sell it in  
17 that configuration.

18 Q. All right. And what about Plaintiff's  
19 Exhibit 606 that we're looking at here?

20 A. 606, we see Ergotron's name at the top, Tech  
21 Data in the middle. So once again, we have the displays  
22 bundled with the stand being offered for sale as an  
23 infringing unit.

24 Q. Do these documents support your opinion that  
25 the DS 100's purpose is to be used with two displays?

1           A.       Yes. In my opinion, its sole and only  
2 purpose is to use with two displays.

3           Q.       Did you consider any other information? I  
4 think you said deposition testimony; is that right?

5           A.       Well, of course. In addition to the ads and  
6 the manuals, I had to examine the legal sworn testimony  
7 of the Ergotron employees.

8           Q.       Okay.

9                   MR. NELSON: Let's go -- is there  
10 anyone --

11                  THE COURT: Counsel, are you going to  
12 have him use those exhibits?

13                  MR. NELSON: I'm sorry.

14                  THE COURT: If not, he can take the  
15 witness stand again.

16                  MR. NELSON: Yes. It's coming up. I'm  
17 sorry.

18                  THE COURT: All right.

19                  MR. NELSON: It's coming up very briefly.

20                  THE COURT: Okay.

21                  MR. NELSON: He's going to go through the  
22 deposition testimony and he's going to write right  
23 there. I'm sorry, Your Honor.

24                   And let's please go --

25           Q.       (By Mr. Nelson) You said the Ergotron --

1           A.       Mr. Segar's deposition testimony, for  
2 example -- he was the corporate representative from  
3 Ergotron -- was --

4           Q.       Okay.

5                   MR. NELSON: Let's see that.

6           Q.       (By Mr. Nelson) And could you just please  
7 read that for the jury, please.

8           A.       The first question there?

9           Q.       Yes. Yes, please.

10          A.       QUESTION: Is the only purpose of this  
11 product we're looking at to hold two electronic  
12 displays?

13                  ANSWER: This particular part number's  
14 designate -- designated -- or is designated to hold two  
15 displays.

16          Q.       And what's the next question? Let's go ahead  
17 and read that through.

18          A.       The next question: And that's the only  
19 purpose of the product, right?

20          Q.       And what's the answer?

21          A.       I guess I'm confused what other purpose  
22 you're thinking.

23          Q.       Okay. And then go to the only purpose.

24          A.       The only purpose I can think of is for this  
25 part number to hold two displays.

1 Q. Okay.

2 A. I just want to make sure that there's nothing  
3 else.

4 Q. Okay. What's his answer there?

5 A. I mean, yeah. We didn't promote -- we didn't  
6 design it to do other -- to hold other things, for  
7 instance. So, yeah, I think it's to hold two displays.

8 Q. Okay. Thank you.

9 MR. NELSON: And I think we just saw Dr.  
10 Santandrea -- or Mr. Santandrea's testimony, but let's  
11 see that.

12 Q. (By Mr. Nelson) And is this Mr. Santandrea's  
13 testimony on the same point?

14 A. I believe it is, yes, sir.

15 Q. Okay. And could you please read this last  
16 question where it says my name, and then the question  
17 and answer following that?

18 A. Starting at Line 5?

19 Q. Yes. Yes, sir.

20 A. We discussed this previously, but when  
21 Ergotron discusses these multiscreen stands with you, it  
22 tells CDW that the purpose of the stand is to attach  
23 monitors to that stand, right?

24 Q. Answer?

25 A. The answer: Yes. In their product

1 literature, I would say that -- I would say that, yes.

2 Q. Okay. And actually, I think that's  
3 Mr. DeTota, just to be clear for the record, and that's  
4 the CDW --

5 A. CDW corporate representative.

6 Q. Yes. Okay.

7 And did you reach an opinion that --  
8 regarding whether the DS 100 is a display system as used  
9 in Claim 16?

10 A. In my opinion, it is a display system as  
11 cited in Claim 16.

12 Q. Okay. And so let's now go back to the  
13 device.

14 A. Yes, sir.

15 Q. Okay. Let's go to base member, please.

16 A. Yes.

17 Q. Does the DS 100 seen here have a base member?

18 A. Yes, sir.

19 Q. And has a base member been defined by the  
20 Court?

21 A. Yes. Base member has been defined by the  
22 Court.

23 Q. And what is that, Dr. Akin?

24 A. It's defined as the lowermost portion of the  
25 system that supports the arm above a surface. You see



1 we have an arm being supported above a surface and that  
2 there is a lowermost -- lowermost portion that I would  
3 refer to as the base.

4 THE COURT: Dr. Akin, I'm not sure the  
5 jury can see. You're pointing toward the audience. If  
6 you could turn that to where -- there, that's better.

7 THE WITNESS: Thank you, Your Honor.

8 A. And as we can see, there is an arm being  
9 supported above a surface. This is the lowermost  
10 portion of that, so under the Court's construction, I  
11 would consider this to be a base under that definition.

12 Q. (By Mr. Nelson) Okay.

13 MR. NELSON: Let's go on then to the pair  
14 of electronic displays, which is the next element of the  
15 claim.

16 Q. (By Mr. Nelson) Dr. Akin, in your expert  
17 opinion, does the DS 100 have this element, or does  
18 it -- is its purpose for this element?

19 A. My understanding and from the sworn testimony  
20 and the information I reviewed that its sole purpose is  
21 to have two displays or to be mounted to two displays.

22 Q. Okay. And let's just see the Court's  
23 construction of that. Is it your expert opinion that  
24 with two displays, that the claim would be met here?

25 A. Yes. These displays meet the Court's

1 definition of electronic device for displaying  
2 information in a visual form, and there are a pair of  
3 them connected to the arms.

4 Q. Okay. Is your opinion based simply on the  
5 fact that the DS 100 is used in connection with two  
6 displays?

7 A. No, sir. As I said, my conclusion is based  
8 on the advertisements, the manuals, and the sworn  
9 testimony of employees of Ergotron.

10 Q. Okay. Good. Thank you.

11 MR. NELSON: Let's put up positioning  
12 means.

13 A. Yes, sir.

14 Q. (By Mr. Nelson) And let's talk about  
15 positioning means.

16 Is it your opinion that the DS 100 meets  
17 positioning means?

18 A. Yes, sir. That constitutes three individual  
19 parts.

20 Q. Okay. And let's just go through those.  
21 Let's go to the Court's claim construction of that,  
22 please.

23 A. Yes. That's defined by the Court as being an  
24 apparatus used to support -- or pardon me -- to position  
25 the displays.

1 Q. Okay.

2 MR. NELSON: So let's go then to Item A,  
3 which is -- back to the claim.

4 Q. (By Mr. Nelson) What is -- in your expert  
5 opinion, does the DS 100 have an arm assembly for  
6 supporting the displays?

7 A. Yes. In my opinion, it does.

8 Q. And would you show the jury, please?

9 A. Yes. But it would probably be clearer here  
10 if we'll remind them of the definition.

11 Q. Oh, yeah, please.

12 MR. NELSON: Let's go to the definition.

13 A. In this case, it's one or more  
14 constitutive --

15 MR. NELSON: Next slide.

16 A. Pardon me, sir.

17 Q. (By Mr. Nelson) Okay. Go on.

18 A. It's one or more constitutive parts  
19 connecting to and projecting from support above -- or  
20 from the base.

21 And we see that there is an arm assembly here  
22 in the DS 100 being supported from the base.

23 Q. Okay. And, Dr. Akin, let's go to B, which is  
24 support means for supporting the arm assembly from the  
25 base member, and let's see the Court's construction for

1 that.

2           Before we get to that, Dr. Akin, what does  
3 this support means? Are you aware of what type of  
4 element this claim is -- or this part of the claim is?

5           A.     Yes, sir. This is a -- a special legal  
6 wording. It's a means-plus-function term or claim  
7 element.

8           Q.     And can you just please tell for the jury  
9 what is a means-plus-function claim, and what is the  
10 test for determining infringement under  
11 means-plus-function?

12          A.     To -- the test is to use a  
13 function-way-result test. You determine if an  
14 infringing -- alleged infringing device satisfies this  
15 claim, if it has structures to perform the identical  
16 function, and it performs that function in identically  
17 the same way or in an equivalent way or has an  
18 equivalent structure for performing that.

19          Q.     Okay.

20                   MR. NELSON: And let's just go to the  
21 next slide.

22          Q.     (By Mr. Nelson) And is this what you're  
23 talking about, Dr. Akin?

24          A.     Yes, sir.

25          Q.     Okay. And let's actually go back to the

1 previous slide.

2 MR. NELSON: And could you -- let's just  
3 highlight on plus equivalents?

4 Q. (By Mr. Nelson) Could you just explain for  
5 the jury the significance of plus equivalents right here  
6 on this and on this (indicating)?

7 A. Well, as we've seen, the Court has identified  
8 certain specific numbered items in the patent, and the  
9 phrase plus equivalents means that one might be able to  
10 find an equivalent structure that satisfies the  
11 necessary legal test.

12 Q. Okay. And, Dr. Akin --

13 MR. NELSON: Let's go to the next slide,  
14 please. Next slide.

15 Q. (By Mr. Nelson) In your expert opinion, can  
16 you please -- is this the Court's claim construction for  
17 the function of -- required by the support means  
18 element?

19 A. Yes, it is.

20 Q. Okay. Could you please explain for the jury  
21 how the DS 100 has the function of supporting the arm  
22 assembly from the base member?

23 A. Well, we can see that it's accomplishing that  
24 here, that there's a cylindrical upright post. There is  
25 a clamp that fits around that and a bolt for tightening

1 that clamp and that that is the structure that  
2 accomplishes this function.

3 Q. Okay.

4 MR. NELSON: Let's go to the next slide,  
5 please.

6 Q. (By Mr. Nelson) And is this -- did you make  
7 the slide?

8 A. Yes. That's my photograph of the device.

9 Q. Okay. And let's look at the two different  
10 structures.

11 MR. NELSON: Let's go to the next slide,  
12 please.

13 A. Yes, sir.

14 Q. (By Mr. Nelson) What are we looking at here,  
15 Dr. Akin?

16 A. The numbers highlighted in yellow are the  
17 specific structure or components identified by the Court  
18 that carry out this function in Figure 7 of the patent.

19 Q. And again --

20 A. And plus the Court's equivalents if they're  
21 found by the function-way-result test.

22 MR. NELSON: And the next slide?

23 Q. (By Mr. Nelson) And what are we looking at  
24 here?

25 A. This is an exploded view of the joint

1 structure defined by the Court. I think we're going to  
2 see an animation where these components are shown being  
3 assembled together to form a closed joint.

4 Q. Okay.

5 MR. NELSON: Let's see that.

6 A. The plug is inserted, we'll see a washer is  
7 applied, and then a bolt comes in and tightens, squeezes  
8 that joint together to form contact surfaces.

9 Q. (By Mr. Nelson) Okay.

10 MR. NELSON: And let's go to the next  
11 slide, please?

12 A. Yes.

13 Q. (By Mr. Nelson) What are we looking at here,  
14 Dr. Akin?

15 A. In this case, in Figure 19, we're looking at  
16 a second set of structures that are identified in the  
17 patent. Once again, the highlighted numbers are the  
18 specific structure that the Court has identified, so we  
19 look for those structures or equivalents.

20 Q. All right. And can it be either the  
21 equivalent of Figure 17 or Figure 19 for this?

22 A. That is correct, sir.

23 Q. Okay. And just to be clear, does the DS 100  
24 need to have the structure that is identical to the  
25 identified structure by the Court?

1           A.       No. It can find equivalent structure defined  
2 by some legal test.

3           Q.       Okay. What structure in the patent performs  
4 the function of supporting the arm assembly from the  
5 base member?

6           A.       The structure in the patent or the figures  
7 that we've just seen, the -- for example, in this case,  
8 we're seeing the plug 208 product is inserted into the  
9 socket 206. They're squeezed together by a bolt that  
10 develops variable pressure and friction through the  
11 contact surfaces when they're squeezed together.

12          Q.       Okay.

13                   MR. NELSON: And let's go to Figure 19.

14          Q.       (By Mr. Nelson) Let's just describe how --  
15 what the way was for Figure 19.

16          A.       Well, I just described Figure 19.

17          Q.       Okay.

18                   MR. NELSON: Then let's go back to Figure  
19 7. I'm sorry. The previous slide, please.

20          Q.       (By Mr. Nelson) Okay. And what is the way  
21 that's done in Figure 7?

22                   MR. NELSON: Previous slide. Yep, there  
23 we go. Perfect.

24          A.       Yes. In this case, once again, we see that  
25 the components are going to be fit together. There is a



1 large washer that's going to be in contact with the  
2 upright. The bolts are going to be inserted.

3 It's going to squeeze those joints together  
4 to develop bearing surfaces that will transmit pressure  
5 and friction necessary to support the weight and the  
6 overturning effect of the arm.

7 Q. (By Mr. Nelson) And can you please explain in  
8 greater detail -- I think you were talking about bearing  
9 pressure. What do you mean by bearing pressure, Dr.  
10 Akin?

11 A. Well, as I described earlier, when you have  
12 two surfaces in contact, they develop a pressure acting  
13 perpendicular to the surface, and they can also develop  
14 a friction that's tangent to the surface or parallel to  
15 the surface.

16 Q. Okay.

17 MR. NELSON: And let's go back to DS 100.

18 Q. (By Mr. Nelson) What structure in the DS 100  
19 performs the function of supporting the arm assembly  
20 from the base member?

21 A. Well, the structure is a clamp joint.

22 MR. NELSON: Next slide. Okay.

23 A. Here are photographs I took at the top and  
24 back view. Here we have the physical back view. A  
25 cylindrical joint with a bolt to tighten and squeeze it

1 around the cylindrical post so that the -- again, that  
2 the surfaces are clamped together.

3           They develop pressures that vary around the  
4 posts and develop friction, and the combination of those  
5 allow the weight of the arm and the display to be  
6 supported by this joint in an equivalent fashion.

7           Q.       (By Mr. Nelson) And can -- again, just can  
8 you explain to us, just to be clear for the jury, the  
9 way that the DS 100 structure performs the function of  
10 supporting the arm assembly from the base member in  
11 substantially the same way as Figures 7 and 19 of the  
12 patent?

13          A.       Well, the -- the Ergotron DS 100 product and  
14 the structure in the patent accomplish that function in  
15 the same way of using variable pressure and compression  
16 to accomplish the same result.

17          Q.       And could you just -- and friction, let's  
18 talk a little bit focusing on friction.

19          A.       For this joint?

20          Q.       Yes.

21          A.       Yes. For example, in this joint, the -- it's  
22 being squeezed around the cylinder, so we've got  
23 pressure perpendicular to the cylinder.

24                 There will be a friction that's developed  
25 parallel to the cylinder around the edge and that, in

1 part, will be supporting the weight and the overturning  
2 torque from the weights of the arm and displays.

3 Q. Okay, Dr. Akin.

4 MR. NELSON: Let's go to the next slide.

5 Q. (By Mr. Nelson) What are we looking at here?

6 A. That is a drawing of the assembled hinge for  
7 the DS 100.

8 Q. Okay. And what --

9 MR. NELSON: Go to the next part of it.

10 Q. (By Mr. Nelson) What is that, Dr. Akin?

11 A. This is an exploded view of all of these  
12 parts, and you see how, once again, they're squeezed  
13 together by the bolt clamp.

14 MR. NELSON: And for the record, this is  
15 Plaintiff's Exhibit 1321.

16 Q. (By Mr. Nelson) And how -- Dr. Akin, again,  
17 can you explain how this support means performs the  
18 function in substantially the same way as Figure 17 and  
19 19 of the patent?

20 A. Well, because, once again, it squeezes the  
21 surfaces together, like I explained earlier, creates a  
22 normal pressure or bearing pressure and perpendicular to  
23 those surfaces and friction parallel to those surfaces,  
24 then in combination, allow the stands to support the  
25 weight and the overturning effect of the weight.

1 Q. Okay. And, Dr. Akin, the last part of this  
2 function-way-result test is result.

3 Did you analyze and compare the results  
4 accomplished by the Figure 17 and 19 structure with the  
5 results accomplished by the DS 100 structure?

6 A. Yes. The test requires that the results be  
7 substantially the same. In this case, the results are  
8 identically the same. That structure, the way they're  
9 accomplishing, they're supporting the arm assembly from  
10 the base.

11 Q. Okay.

12 MR. NELSON: Let's move on to the next  
13 part of the claim, please.

14 Q. (By Mr. Nelson) And, Dr. Akin, what is this  
15 next part of the claim here?

16 A. This mounting means is actually two separate  
17 means-plus-function clauses.

18 Q. Okay. And what are those, Dr. Akin?

19 A. The first is a means for mounting the  
20 displays to the arm assembly.

21 Q. Okay. And let's just focus on that, and  
22 could you show the jury what you're talking about for  
23 the means for mounting?

24 A. The means for mounting in this case is, in  
25 each case, is a hinge connected to the rear of the

1 display through a rotational joint, that is, the hinge,  
2 connecting to the arm with an arm connector.

3 And so this is essentially a vertical hinge  
4 in this form. And there are a pair of those, one for  
5 each display, joining it to the arm.

6 Q. Okay. And, Dr. Akin, is this also a  
7 means-plus-function element?

8 A. Yes. This is another means-plus-function  
9 element where I would have to apply a function-way-  
10 result test.

11 Q. Okay.

12 MR. NELSON: So let's go to that next  
13 slide, please. Next slide.

14 Q. (By Mr. Nelson) And what is the claim term  
15 for -- what is the function, as defined by the Court,  
16 for this claim term?

17 A. This claim term is supposed to function to  
18 mount displays to the arm assembly.

19 Q. Okay. Does the DS 100 have structure that  
20 performs this function? Please show the jury if it does  
21 and how it does.

22 A. Yes. It has structure performing this. We  
23 see we have this vertical hinge attached to the rear of  
24 the display. There are several horizontal surfaces  
25 connected together with a bolt through the center.

1 Those surfaces are squeezed together.

2           They develop, again, a variable pressure  
3 around those surfaces and a friction. Then in  
4 combination will support the weight and its overturning  
5 torque from being out in front of the arm to accomplish  
6 that mounting of the displays to the arm.

7           Q.       Okay.

8                   MR. NELSON: And let's go to Plaintiff's  
9 Exhibit 351.

10          Q.       (By Mr. Nelson) What are we looking at here,  
11 Dr. Akin?

12          A.       This is the instruction manual for the DS  
13 100.

14          Q.       Okay.

15                   MR. NELSON: And let's blow up the part  
16 where it talks about mounting.

17          Q.       (By Mr. Nelson) What are we seeing here,  
18 Dr. Akin?

19          A.       We're seeing here in the top image that a  
20 display with its mounting bracket is supposed to be  
21 inserted in the slot of the arm with the bolt -- the arm  
22 connector or the hinge connector tightened, and that is  
23 the way that the manual recommends the mounting of the  
24 displays to the arm.

25                   And from the way this drawing is shown, I can

1 see that that means that it's supposed to be with the  
2 hinge in the vertical position.

3 Q. And by just explaining to the jury, when the  
4 hinge is in the vertical position, what does that mean?

5 A. In that case, it means we have this  
6 side-by-side motion of the displays relative to the arm  
7 and relative to each other.

8 Q. Okay. And, Dr. Akin, has the Court  
9 identified structure in a patent that performs the  
10 mounting function?

11 A. It has.

12 Q. Okay.

13 MR. NELSON: Next slide, please. Next  
14 slide. Okay. Sorry. Next slide. Yeah, there we go.

15 Q. (By Mr. Nelson) What is that, Dr. Akin?

16 A. The Court has identified, again, the numbered  
17 items that are highlighted in yellow in Figure 8 and  
18 Figure 9. Those structures, plus equivalents, would --  
19 are the structure that the Court cites here, one of the  
20 two sets.

21 Q. Okay. And to be clear, Dr. Akin, does the DS  
22 100 need to have the structure that is identical in  
23 Figures 8 and 9 in order to infringe the patent?

24 A. No. It can have equivalent structure.

25 Q. Okay. And let's go then to the way part of

1 the function-way-result.

2           How does the Figure 8, 9 structure perform  
3 the function of mounting the displays to the arm  
4 assembly?

5           A.     Well, if we start looking at the right  
6 figure, we'll see that in the back there is an Item  
7 No. 16, which represents the rear of the display in the  
8 patent where a socket is mounted.

9           And in this case, we see that the -- there is  
10 a ball joint, 56 is inserted into that socket and  
11 develops a contact surface area over part of that ball  
12 where again pressures develop and frictions develop so  
13 that in combination, those pressures and frictions can  
14 support the weight of the display through this  
15 rotational joint and resist the overturning effect of  
16 the display through this rotation.

17          Q.     Do the tabs identified by the Court play a  
18 roll in mounting the displays to the arm assembly?

19          A.     Yes.

20          Q.     Okay. And what is that?

21          A.     The tabs that you're referring to are Tab No.  
22 80 in this Figure 9.

23          Q.     Okay.

24                   MR. NELSON: Let's go to the next slide,  
25 please. Let's see. Yep.



1 Q. (By Mr. Nelson) Okay.

2 A. In this case, we're seeing an animation of  
3 how the ball joint is inserted into the socket at the  
4 rear of the display, and then the tabs are going to be  
5 brought forward and placed into a matching set of sort  
6 of Y-shaped tabs in the arm and rotated and locked into  
7 position.

8 Q. Okay.

9 MR. NELSON: And let's go, please, to the  
10 next slide.

11 Q. (By Mr. Nelson) What are we looking at here,  
12 Dr. Akin?

13 A. This is the second structure identified by  
14 the Court, the Figure 19 and 20 structure. Once again,  
15 the numbered parts highlighted in yellow are the ones  
16 that have been identified by the Court as the structure  
17 to be used to compare against the infringed device or  
18 the equivalent structure.

19 Q. Okay. And, Dr. Akin, you said the  
20 highlighted structures have been identified by the  
21 patent; is that right?

22 A. Yes.

23 Q. Okay. And, again, to be clear, does the DS  
24 100 need to have a ball joint or a structure that is  
25 identical to this Figure 1920 structure in order to meet

1 this part of the claim?

2 A. No, it does not have to have an identical  
3 structure. It has to have an equivalent structure that  
4 is determined by a legal test.

5 Q. Okay. How does the Figure 19, 20 structure  
6 perform the function of mounting the displays to the arm  
7 assembly?

8 MR. NELSON: Next slide, please.

9 A. Well, once again, we see that we're  
10 starting with, in this case, 152, the rear of a display  
11 to which a socket is mounted, the ball jocket (sic) --  
12 ball joint -- the ball, rather, is inserted into that  
13 socket.

14 They develop a contacting surface area over  
15 part of the surface of the ball, and it's squeezed  
16 together here to form pressures and friction, and that  
17 combination of pressure and friction are sufficient to  
18 support the weight of the display and its overturning  
19 torque as it's transmitted through that joint.

20 Q. (By Mr. Nelson) Okay. And, Dr. Akin, did you  
21 perform an analysis of the way on the DS 100 structure  
22 right in front of you?

23 A. Yes.

24 Q. Okay. What structure in the DS 100 performs  
25 the claimed mounting function?

1 MR. NELSON: And next slide, please.

2 Q. (By Mr. Nelson) What are we looking at here,  
3 Dr. Akin?

4 A. Here you see a photograph that I took -- it's  
5 probably going to be easier for you to recognize, but in  
6 this case, we see that there is a rotational joint  
7 attached to the rear of the display, in this case, it's  
8 a vertical hinge, and bolted through a connector to the  
9 arm; that it consists of parallel surfaces in this case  
10 that are in contact with each other and through -- and  
11 there's a bolt through the center squeezing those  
12 together, so it develops a variable amount of pressure  
13 and friction distributed through this joint so that  
14 combination will support the weight of the display and  
15 resist its overturning effect by being out in front of  
16 the display.

17 Q. And, Dr. Akin, where is the mounting actually  
18 located with respect to where it is on the back of the  
19 display?

20 A. Well, in this case, again, we can see that  
21 the hinge is directly connected to the mounting plate  
22 that is intended to have the standard industry  
23 connection to a display --

24 Q. And then --

25 A. -- at the back of the display.

1           Q.     Okay. And again, let's just go into a little  
2 bit more detail about the friction accomplished there,  
3 Dr. Akin.

4           A.     Yes, sir.

5           Q.     Can you give a little more detail, please,  
6 about the friction?

7           A.     Sure.

8           Q.     Yeah.

9           A.     We probably see it a little bit more clearly  
10 here, but you can recognize that, for example, the top  
11 and bottom surfaces of the joint where it's being  
12 squeezed together -- I'll just put my mic down.

13                   You'll see that there are horizontal surfaces  
14 there so that on the top, for example, there would be a  
15 frictional force that develops on that bearing pressure  
16 that pulls towards the arm, and then on the bottom,  
17 there would be one of equal magnitude to the opposite  
18 direction.

19                   So those two pulling in opposite directions  
20 create a torque and that torque, in part, resists again  
21 the overturning effect from the weight of the display  
22 being placed in front of the arm.

23           Q.     Okay. And, Dr. Akin, did you compare the way  
24 the DS 100 performs the claim mounting function with the  
25 ways that the Figure 8, 9 structure and the 19, 20

1 structure identified in the patent perform that  
2 function?

3 A. Yes. The structure in the patent, the two  
4 sets of structures in the patent, and the Ergotron  
5 structure here for the DS 100 accomplish that function  
6 in substantially the same way but using variable  
7 pressures and friction in order to develop the necessary  
8 force and torque to mount the displays to the arm.

9 Q. Okay. And, Dr. Akin, did you compare the  
10 results in Figures 8, 9 of the patent and Figures 19, 20  
11 of the patent with the results achieved by the mounting  
12 structure in the DS 100?

13 A. Yes. Those results have to be substantially  
14 the same. Again, in this case, they're identically the  
15 same, that the monitor is securely and safely mounted to  
16 the arm assembly.

17 Q. Okay. And just to be clear, so that in your  
18 opinion, Dr. Akin, does the DS 100 meet the mounting  
19 means portion of this Claim 16?

20 A. Yes, sir. In my opinion, it does.

21 Q. Okay.

22 MR. NELSON: And let's go, please, to the  
23 next slide.

24 Q. (By Mr. Nelson) What is the next part of  
25 this -- of this claim, Dr. Akin?

1           A.       There has to be a means for adjust --  
2 adjusting the angular orientation of the displays  
3 relative to the arm assembly.

4           Q.       And, again, Dr. Akin, is this a  
5 means-plus-function claim?

6           A.       It is a means-plus-function display that,  
7 again, requires a function-way-result test.

8           Q.       And, Dr. Akin --

9                   MR. NELSON: Next slide, please.

10          Q.       (By Mr. Nelson) What are we looking at here?

11          A.       We're looking at the definition of the  
12 function as adjusting the angular orientation, and we're  
13 also looking at a top view, which is Figure 4 in the  
14 patent, but I think it's going to be animated to show  
15 how the ball joint in the patented structure  
16 accomplishes this adjustment feature.

17          Q.       Okay. And how -- how does the patent --  
18 actually, let's go to the animation. What are we  
19 looking at here, Dr. Akin?

20          A.       So, again, we're looking, in this case, at a  
21 top view looking down at the patented structure where we  
22 see that the ball joint allows the rotation so that we  
23 get the side-to-side motion of the displays relative to  
24 the arm assembling.

25          Q.       Okay. And, Dr. Akin, let's -- in your expert

1 opinion, does the DS 100 perform the function of the  
2 Court's claim construction of adjusting the angular  
3 orientation of each of the displays relative to the arm  
4 assembly?

5 A. Yes, sir. It's quite easy to see here that  
6 both structures -- both of the displays can easily be  
7 rotated relative to the arm assembly.

8 Q. Okay.

9 MR. NELSON: And next slide, please.

10 Q. (By Mr. Nelson) And what are we looking at  
11 here again, Dr. Akin?

12 A. We're back to the Ergotron installation  
13 manual for the DS 100.

14 Q. Okay.

15 MR. NELSON: And let's blow that up,  
16 please.

17 Q. (By Mr. Nelson) What are we looking at here?

18 A. Here we're looking at a similar top view of  
19 this particular device where we see that there -- the  
20 rotation is taking place about this -- in this case, the  
21 vertical hinge, and it has exactly the same motion  
22 relative to the arm assembly so that the displays can be  
23 rotated relative to the arm assembly and towards one  
24 another.

25 Q. Okay.

1 MR. NELSON: And next slide, please.

2 Q. (By Mr. Nelson) What are we looking at here,  
3 Dr. Akin?

4 I'm sorry. Go on. Did you want to go back  
5 to the previous slide?

6 A. Well, there was another part of that.

7 Q. Go ahead. Yeah. Yeah.

8 A. And also I noted that at the top of this  
9 line, it states that that is the factory setting that  
10 the -- for the hinges that the displays are intended to  
11 be used in this side-to-side motion.

12 Q. Okay. And, Dr. Akin, there's these little  
13 arrows right here. What do those arrows represent right  
14 there on the instruction manual?

15 A. Well, they represent the motion -- as I said,  
16 the side-to-side motion of the displays.

17 Q. Okay.

18 MR. NELSON: Next slide, please.

19 Q. (By Mr. Nelson) What are we looking at here,  
20 Dr. Akin?

21 A. This, again, is the Court's construction, and  
22 it's the same physical pieces that we saw numbered  
23 before in the previous Figure 8 and Figure 9 drawing  
24 from the patent.

25 Q. Okay. And so what structure did the Court



1 identify from the '978 patent as performing the function  
2 of adjusting the angular orientation of the displays  
3 relative to the arm assembly?

4 A. Well, we see -- for example, on the right, it  
5 starts with the back of the display, the rear of the  
6 display. We have a socket 60. We have the ball 56 that  
7 fits in that socket. And then, of course, there is a  
8 shaft continuing on from that.

9 Again, we come to the tabs that are going to  
10 be supported -- going to be inserted into the arm and  
11 locked into position in the arm similar to the way the  
12 bolt is locked here.

13 Q. Okay. And, Dr. Akin, in what way does the  
14 Figure 8, 9 structure perform this function of adjusting  
15 the angular orientation of each of the displays relative  
16 to the arm assembly?

17 A. Well, when we insert the ball in the socket,  
18 you can recognize that there's -- it limits the motion.  
19 In engineering jargon, we call that kinematic  
20 constraint.

21 So the ball is placed inside the socket,  
22 which means that it cannot move around, it cannot  
23 translate, but it still has its ability to rotate.  
24 And in this case, we only need one type of rotation in  
25 the claim, and that's the side-to-side rotation.

1 So --

2 Q. And -- I'm sorry, Doctor. I didn't mean to  
3 interrupt. Go on.

4 A. So it's through this kinematic constraint of  
5 these surfaces being in contact with one another that  
6 allows this rotation to take place about the center of  
7 the ball.

8 Q. And where in the patent, Dr. Akin, is it --  
9 is the means for adjusting happening with respect to  
10 where the display is?

11 A. Again, it's happening relative to the rear of  
12 the display at which point, of course, it is attached in  
13 the patent -- I should not be pointing to this -- in the  
14 patent, that is where it is attached, as we saw from the  
15 numbered device -- or from the numbered items.

16 Q. Okay.

17 MR. NELSON: And next slide, please.

18 Q. (By Mr. Nelson) What are we looking at here?

19 A. Here we are looking at the same structure we  
20 talked about before with the mounting means, in this  
21 case, on the right. We're starting from the rear of the  
22 display, 152. We're going to have a socket that's  
23 attached to that rear of the display.

24 Again, the ball is going to be put in the  
25 socket, which presents three -- three -- present this

1 limiting or constraining to one point, one location, but  
2 still allows the rotation, the one degree of rotation,  
3 needed for this claim.

4 Q. Okay. And, again, what is this, Dr. Akin?

5 A. This is an animation of the socket on the  
6 rear of the display with the ball being inserted, and  
7 then, of course, the shaft continues on.

8 In this case, there's a plug, a square-type  
9 plug, that would fit into a corresponding portion of the  
10 arm.

11 So it's those structures, plus the equivalent  
12 structure that might be found by the function-way-result  
13 test.

14 Q. Okay. Now let's go back, Dr. Akin, to the  
15 device in front of you.

16 A. Yes, sir.

17 MR. NELSON: Next slide, please.

18 Q. (By Mr. Nelson) What are we looking at here,  
19 both in front of you and on the screen right there?

20 A. Well, here are the photographs that I took  
21 that made it a little bit more clearer. So looking  
22 down, you can see that the vertical hinge is set up to  
23 allow this to be rotated -- the display to be rotated  
24 here relative to the arm display.

25 And so that's what we're seeing here, just

1 sort of a top view of this joint accomplishing that.

2 Q. And again, Dr. Akin, on the DS 100, where --  
3 where is the rotation at? Where is it mounted there?

4 A. The means for adjusting is the mounting -- is  
5 mounted here to the rear of the display and then, of  
6 course, mounted to the arm.

7 Q. Okay. Now, Dr. Akin, does the DS 100 have  
8 the exact structure identified by the Court?

9 A. It does not.

10 Q. Why does that not matter?

11 A. Well, as we said previously, it does not have  
12 to have the exact structure. It only has to have an  
13 equivalent structure as determined by some legal test.

14 Q. Okay. And why, in your opinion, is the way  
15 that the DS 100 performs the claimed adjusting function  
16 substantially similar as Figures 8, 9 and Figures 19, 20  
17 of the '978 patent?

18 A. Well, I don't recall discussing the way for  
19 the hinge. The way for the hinge is that, once again,  
20 we have these horizontal mounting surfaces -- we can't  
21 see in that view, but the jury can see it on here --  
22 that are squeezed together.

23 And so those surfaces mount or touch each  
24 other in such a way that it constrains the joint in two  
25 ways. The joint cannot move around. The center point

1 of the joint is fixed, but those horizontal surfaces  
2 that contact also constrain the kinematics.

3           So in this case, the joint has only one  
4 degree of motion, and that's the one degree of motion  
5 claimed in the patent, the side-to-side motion.

6 I --

7           Q.     Okay. And, Dr. Akin -- I'm sorry. Go on.

8           A.     I didn't finish the answer.

9           Q.     Oh, sorry.

10          A.     And so both the patented structure and the  
11 Ergotron DS 100 structure accomplish the same result in  
12 substantially the same way by using kinematic  
13 constraints for a rotation about a single point that  
14 allows the rotation of the side-to-side motion and  
15 accomplishes similar results to those in the patent.

16                 So they, in my opinion, are equivalent  
17 structures.

18          Q.     Dr. Akin, in your opinion, is the hinge a  
19 subset of movement for the ball and socket and  
20 encompasses the range of motion that's required by  
21 the -- by the patent?

22          A.     Yes. The rotational effect, the visual  
23 effect of a hinge having one degree of freedom in this  
24 case, essentially vertical, and the visual effect of  
25 rotation of the ball, the hinge is a subset, because the

1 ball can rotate in this -- about this axis, this  
2 side-to-side motion, but it can also rotate in about two  
3 other axes. It can rotate about a horizontal axis here  
4 or a horizontal axis there (indicating).

5 So the ball has other capabilities, but  
6 they're not required in this claim. Just the rotation  
7 of the displays relative to the arm assembly and towards  
8 each other is what's claimed.

9 MR. NELSON: And the next slide, please.

10 Q. (By Mr. Nelson) What are we looking at here,  
11 Dr. Akin?

12 A. Here we're looking at an animation of how, on  
13 the left, a hinge can rotate only about a vertical axis  
14 in this case to accomplish the side-by-side rotation.

15 Q. Okay.

16 A. And we see that a ball joint can do exactly  
17 that as well. It can also accomplish this side-to-side  
18 rotation.

19 Q. Okay.

20 MR. NELSON: And next slide, please.

21 Q. (By Mr. Nelson) What are we looking at here,  
22 Doctor?

23 A. But beyond that, here we're seeing another  
24 animation that shows that a ball joint has other  
25 abilities to rotate that are not a part of this claim.

1 It can rotate about the axis coming out front of the  
2 member. It can rotate so that it can go between the two  
3 slots in the two pink pieces here that are the socket  
4 representation.

5 So a ball joint has other degrees of  
6 rotational freedom, what we can see going on at the ball  
7 joint, that are not needed in this claim.

8 MR. NELSON: Next slide, please.

9 Q. (By Mr. Nelson) What are we looking at here,  
10 Dr. Akin?

11 A. This is a table taken from a textbook of  
12 the -- some of the most common types of mechanical  
13 joints, a textbook that I've used in one of the classes  
14 that I teach.

15 Q. Okay.

16 MR. NELSON: Next slide.

17 Q. (By Mr. Nelson) What is that, Dr. Akin?

18 A. The top element in this table has a figure of  
19 a -- what's called a revolute joint or what every day we  
20 call a hinge joint.

21 And the third column, it has the No. 1, and  
22 that indicates that it has only one degree of rotation,  
23 and then also there's some comments that I added that  
24 should have been in red, I guess, that points out that a  
25 hinge allows only one directional motion.

1 Q. Okay. And just to be clear for the jury,  
2 this is your comment, not on the text, right?

3 A. That is my comment, not the text.

4 Q. Okay. And although you see right here --  
5 what is that, Dr. Akin?

6 A. The curved arrow again is indicating the  
7 direction of rotation in this case, not a port --

8 Q. Okay.

9 A. -- but it has a single axis of rotation on  
10 this hinge.

11 Q. And what is this right here, Dr. Akin?

12 A. That's my sort of sketch to --

13 Q. No. The No. 1. I'm sorry.

14 A. No. 1 shows that in the engineering jargon,  
15 this has one degree of rotational freedom.

16 Q. Okay. And, Dr. Akin, what else have you  
17 highlighted here?

18 A. In the lower portion of that table, it's what  
19 the engineers call a sphere or ball joint, which is --  
20 as I've indicated, it's a rotational structure that the  
21 visible feature is that it's restrained so that it has  
22 to rotate about the center of the ball, but it can  
23 rotate about three axes.

24 So you see the No. 3 in the third column.

25 And so I've also added some connotations that



1 were not in the text that points out that it can rotate  
2 about any axis. Whatever the hinge axis is, the ball  
3 joint can have that subset of rotational or visual  
4 effects.

5 Q. And, Dr. Akin, did you also consider the  
6 testimony of Ergotron's corporate representative on this  
7 point?

8 A. Yes, I did. I listened -- or read the  
9 deposition testimony of the Ergotron employees, I  
10 believe Mr. Segar.

11 Q. Go ahead and sit down for this part.

12 A. Thank you, sir.

13 THE COURT: Are you getting close to a  
14 breaking point or --

15 MR. NELSON: Yes, Your Honor. If we go  
16 about three more minutes, we'll be subject -- we'll be  
17 done with the DS 100.

18 THE COURT: All right. Very good.

19 MR. NELSON: Okay. Maybe actually five  
20 more minutes.

21 THE COURT: All right.

22 MR. NELSON: Don't hold me to three,  
23 please.

24 Q. (By Mr. Nelson) Okay. You were talking about  
25 the deposition testimony of Dr. Segar -- or Mr. Segar --

1 A. Yes, I was.

2 Q. -- Dr. Akin?

3 And did you consider that testimony?

4 A. I did.

5 Q. And is this the testimony you considered?

6 A. Yes.

7 (Video playing.)

8 ANSWER: The ball and socket would allow  
9 you to move it side to side, up and down, or in a  
10 rotational manner. So it really has three degrees of  
11 freedom.

12 QUESTION: Looking solely at the  
13 side-to-side aspect of it --

14 ANSWER: Uh-huh.

15 QUESTION: -- it allows the same degree  
16 of movement as the joint that Ergotron uses?

17 ANSWER: Clarify. Can you clarify the  
18 question?

19 QUESTION: Sure. The ball-and-socket  
20 joint moves on a side-to-side rotation the same  
21 degree -- has the same degree of movement as the  
22 Ergotron pivot, right?

23 ANSWER: I'm not sure you get the same  
24 full 90 degrees of rotation, but you can -- you can move  
25 it side to side and up and down and swivel it.

1                   So you -- I guess you get the same -- you  
2 get more than the motion that we have.

3                   QUESTION: But it includes the motion  
4 that you have?

5                   ANSWER: It includes -- it includes the  
6 motion that we have, plus more.

7                   (End of video clip.)

8           Q.       (By Mr. Nelson) And does that affect your  
9 opinion one way or the other, Dr. Akin, about whether  
10 the DS 100 performs the function in substantially the  
11 same way as Figures 8, 9 and 19 and 20 of the patent  
12 with respect to this element?

13          A.       Yes. It confirmed my analysis that it does  
14 satisfy those elements in Claims 16 and 17 in the '978  
15 patent.

16          Q.       And, Dr. Akin, finally, with respect to this  
17 part of the element, did you compare the results  
18 achieved by the adjusting structure identified by the  
19 Court in Figures 8 and 9 and 19 and 20 of the patent  
20 with the results achieved by the adjusting structure for  
21 the DS 100?

22          A.       Yes, I did.

23          Q.       And what was your conclusion there?

24          A.       Well, again, the results were identical in  
25 that it allowed each of the displays to be rotated

1 relative to the arm assembly and toward one another.

2 Q. Okay. And in your opinion, Dr. Akin, just to  
3 sum up for at least this part of the element, does the  
4 DS 100 have the claim means for adjusting that's in the  
5 patent?

6 A. Yes, it does. Yes. I -- I was thinking of  
7 adjusting when I answered that question --

8 Q. Okay.

9 A. -- but it also has the mounting means.  
10 But for adjusting means, it also satisfies those  
11 elements of Claims 16 and 17.

12 Q. Okay.

13 MR. NELSON: And I think this probably  
14 is -- I'm not quite done with the DS 100, but this is an  
15 appropriate stopping point, if it's okay with the Court.

16 THE COURT: All right. Very well.

17 All right. Ladies and Gentlemen of the  
18 Jury, we'll take our afternoon break, and we'll come  
19 back at 3:15.

20 So enjoy your break. Remember my  
21 instructions. Be in recess.

22 COURT SECURITY OFFICER: All rise.

23 (Jury out.)

24 (Recess.)

25 COURT SECURITY OFFICER: All rise.

1 THE COURT: Please be seated.

2 All right. Mr. Nelson, you may proceed.

3 MR. NELSON: Thank you, Your Honor.

4 Let's go, please, to the final element of  
5 the claim, and if we can put that slide -- yeah.

6 Q. (By Mr. Nelson) Dr. Akin, finally, what is  
7 the final part of Item C that the jury can read down  
8 there and then up here on the screen?

9 A. The final part is, to thereby permit said  
10 displays to be angled toward each other to a desired  
11 degree.

12 Q. And what did you conclude with respect to  
13 whether the DS 100 can be angled towards each other to a  
14 desired degree?

15 A. Since the Court did not define the term, that  
16 means I have to interpret it in terms of this  
17 hypothetical person of ordinary skill in this field. So  
18 I -- I interpreted that to mean that the displays can be  
19 booked in some way for the desire of the user.

20 Like you might have it in one position and  
21 perhaps the sun has changed, and you now have glare and  
22 you want to adjust it to a desired degree to obtain a  
23 comfortable or desirable result of not having such a  
24 glare.

25 Q. And, Dr. Akin, to be clear, I want you to

1 assume for me that the DS 100 can only move in an  
2 up-and-down manner.

3 A. All right, sir. In a permanent?

4 Q. Permanent configuration.

5 A. Yes, sir.

6 Q. In that permanent configuration, would the DS  
7 100 infringe?

8 A. No, sir.

9 Q. Okay. Why in your -- does -- let me back up.  
10 Does the DS 100 have an up/down rotation as  
11 well as the side-to-side rotation?

12 A. It does. You could rotate the hinge very  
13 easily into a horizontal position and would accomplish,  
14 in that temporary fixture, the motion that you've  
15 described.

16 Q. Why, in your opinion, does it not matter for  
17 infringement purposes whether it goes up, down, or side  
18 to side?

19 MR. NIEDERLUECKE: Your Honor, I have an  
20 objection. Please approach?

21 THE COURT: All right.

22 (Bench conference.)

23 MR. NIEDERLUECKE: Your Honor, they're  
24 about to testify -- the expert is about to testify that  
25 this is capable of infringement in a different

1 configuration, because you can reconfigure it.

2 None of that is in his report. He wasn't  
3 even aware at the time he was deposed that the  
4 thing could be -- that the DS 100 could be set up  
5 differently. So it's nowhere in his report that -- he's  
6 just about to testify to that.

7 The witness is set up in a fashion -- he  
8 doesn't have in his report anything about that and about  
9 whether or not that would be an infringing setup.

10 THE COURT: I think he just testified  
11 that it would not be.

12 MR. NIEDERLUECKE: He did, but now he's  
13 about to tell why it can be, even though it doesn't have  
14 a permanent fix. They're going to argue that because  
15 it's not a permanent fix and that you can take it apart  
16 and reconfigure it, it infringes.

17 THE COURT: Side to side?

18 MR. NIEDERLUECKE: Do it side to side.  
19 And that's not in his report anywhere.

20 THE COURT: He's got in his report that  
21 it infringes, if it goes from side to side.

22 MR. NIEDERLUECKE: Side to side but not  
23 up and down, Your Honor. He didn't analyze that.

24 MR. NELSON: He does talk about the  
25 side-to-side movement, Your Honor, and it's to make

1 clear some of his deposition testimony where  
2 Mr. Niederluecke was questioning him, and we want to  
3 make clear that as there's the capability there, it  
4 would still infringe, despite this up/down movement.

5 MR. NIEDERLUECKE: He did not rely on  
6 that, and he did not even say that in his deposition  
7 responses, Your Honor. And if Mr. Nelson can prove me  
8 wrong --

9 MR. NELSON: No, I'm not -- I'm not  
10 disputing that.

11 THE COURT: Okay. Sustain the objection.

12 MR. NELSON: Can I get some  
13 clarification?

14 I would like to go back to what he's  
15 already testified to about this standard factory  
16 setting. He's already testified to that, and I can go  
17 there?

18 THE COURT: Sure.

19 MR. NELSON: Okay.

20 (Bench conference concluded.)

21 MR. NELSON: Let's go, please, to  
22 Plaintiffs' 351, which is the installation manual.

23 Q. (By Mr. Nelson) And, Dr. Akin, can -- what is  
24 the standard factory setting for the DS 100 as -- as  
25 instructed by Ergotron here?



1           A.       Well, as we can see from the top of this  
2 page, and I think I pointed it out early, that the  
3 standard factory setting is so that the displays are set  
4 to move in this side-to-side motion.

5           Q.       Thank you.

6                   And just to wrap up Claim 16 in the DS 100,  
7 do you have an opinion as to whether the DS 100  
8 infringes Claim 16 of the '978 patent?

9           A.       I do.

10          Q.       What is that opinion?

11          A.       In my opinion, it infringes Claim 16 and 17  
12 of the '978 patent.

13          Q.       Okay. Well, we'll get to Claim 17 in a  
14 little bit, but let's focus on Claim 16 for right now.

15          A.       Yes, sir.

16          Q.       Okay. And just please restate your opinion  
17 with respect to Claim 16.

18          A.       Yes. Thank you, sir.

19                   In my opinion, the DS 100 dual infringes  
20 Claim 16 of the '978 patent.

21          Q.       Okay. And let's now go to Claim 17.

22                   MR. NELSON: The next slide, please.

23          A.       Yes, sir.

24          Q.       (By Mr. Nelson) And, Dr. Akin, what is your  
25 opinion as to whether the DS 100 infringes Claim 17 of

1 the '978 patent?

2 A. Well, Claim 17 includes a substantial portion  
3 of the same items that were in Claim 16, and for the  
4 reasons that I described earlier, plus examination of  
5 the additional terms in these claims, it is my opinion  
6 that the DS 100 dual also infringes on Claim 17 of the  
7 '978 patent.

8 Q. Let's talk about a few -- or those three  
9 differences.

10 MR. NELSON: Next slide, please.

11 Q. (By Mr. Nelson) Could you, please, Dr. Akin,  
12 explain these differences to the jury and why you  
13 believe that with respect to these elements that the DS  
14 100 has the claimed elements?

15 A. Well, for example, in the supporting means,  
16 there's been an additional term that it has to support  
17 the arm assembly above a surface. And I think I've  
18 demonstrated earlier that it does support the arm above  
19 the surface.

20 And likewise, down in the means for  
21 adjusting, there is an additional phrase -- two  
22 additional phrases. One is that it has to be about a  
23 generally vertical axis, and we just saw in the previous  
24 slide that the factory setting for this device is about  
25 a generally vertical axis, and that thereby that

1 generally vertical axis motion, or the side-to-side  
2 motion, has to allow the displays to move relative to  
3 each other to a desired degree.

4 Q. Dr. Akin, for the portions of Claim 17 that  
5 are the same as Claim 16, do you have an opinion  
6 regarding whether those portions of Claim 17 are met in  
7 the DS 100?

8 A. Yes. For the reasons that I explained above,  
9 those identical portions are equally found in the device  
10 for Claim 17.

11 Q. Okay. And, Dr. Akin, just to restate and  
12 wrap up here with respect to Claim 17, what is your  
13 opinion with respect to DS 100 with two displays,  
14 whether that would infringe Claim 17 of the '978 patent?

15 A. Yes. I should have pointed out previously  
16 that it does require the two displays to be present.

17 So for the reasons that I explained for Claim  
18 16 and for these additional features that I have  
19 verified are also present -- these claim elements are  
20 also present, I do find that the DS 100 dual infringes  
21 Claim 17.

22 Q. Okay. Now, Dr. Akin, was there another  
23 product that you analyzed in the DS 100 family besides  
24 the DS 100 dual?

25 A. Yes, sir.

1 Q. And what is that?

2 A. Another product that I analyzed was the DS  
3 100 horizontal quad and the --

4 MR. NELSON: Your Honor, may I approach?

5 A. -- and the LX.

6 THE COURT: Yes you may.

7 Q. (By Mr. Nelson) Dr. Akin, are you able to see  
8 that?

9 A. Yes, sir.

10 Q. Okay. What is your opinion with respect to  
11 the DS 100 quad and whether it infringes the patent?

12 A. The DS 100 quad, with two displays attached,  
13 would infringe Claims 16 of the '978 patent, in my  
14 opinion, and also Claim 17 of the '978 patent.

15 Q. What are the reasons why you believe that the  
16 DS 100 quad infringes Claims 16 and 17 of the patent?

17 A. Well, basically, it is almost just two DS  
18 100s connected together. It does have a slightly  
19 different supporting means, and I would have to apply  
20 the function-way-result test, too, but -- I guess I  
21 forgot your question, sir.

22 Q. That's okay.

23 What reasons, I think, was my question. What  
24 reasons do you think why the DS 100 quad infringes  
25 Claims 16 and Claim 17 of the '978 patent?

1           A.       For the reasons that I've described above,  
2 plus the additional study that I had to do of the  
3 slightly different mounting support means.

4           Q.       All right. And we talked about the support  
5 means.

6           A.       Yes, sir.

7                   MR. NELSON: Let's please go to the next  
8 slide. And the next slide.

9           Q.       (By Mr. Nelson) Dr. Akin, what are we looking  
10 at here?

11          A.       This is a photograph that I took showing the  
12 different clamping means for supporting the arm on the  
13 upright. In the DS 100 quad, we see that, once again,  
14 we have an upright cylindrical clamp that is clamped  
15 around the upright post and accomplishes that same -- as  
16 I described before, the same contact surfaces, bearing  
17 pressures, and friction to receive and transmit the  
18 weight and the torque.

19                  But in addition, it has a slight projection  
20 in the front. Instead of being built into the arm, this  
21 actually has a bolted connection or a fastener that  
22 attaches to a hole or a slot in the arm assembly instead  
23 of being built in.

24          Q.       And, Dr. Akin, does the DS 100 quad structure  
25 support the arm assembly from the base member in

1 substantially the same way as the patent structure you  
2 previously discussed?

3 A. Yes, for the reasons I previously discussed.

4 Q. And, Dr. Akin, just to be clear, it's the DS  
5 100 with monitors; is that right?

6 A. Yes, sir.

7 Thank you for pointing out my omission.

8 Q. Okay. And, Dr. Akin, did you also --

9 MR. NELSON: Actually, next slide. Next  
10 slide, please.

11 Q. (By Mr. Nelson) Did you also analyze the  
12 inducement to infringe and contributory infringement?

13 A. I did, sir.

14 Q. And have you seen any evidence that the  
15 Defendants instruct the end users to install displays on  
16 the DS 100 stand?

17 A. Yes, sir.

18 Q. What is that evidence, briefly?

19 A. Well, once again, we have on the screen the  
20 image taken from the installation manual. We'll see in  
21 the lower left, for example, that -- pardon me -- that  
22 it is showing the displays to be mounted to the arm  
23 using tools so that the hinge is connected in that  
24 vertical position that allows the side-to-side motion.

25 Q. And, Dr. Akin, in your opinion, is the DS 100

1 a staple article of commerce?

2 A. No, sir. Without attached displays, I think  
3 it has no other function.

4 Q. Okay. And are you aware of any substantial  
5 non-infringing uses of the stands?

6 A. I am not, sir.

7 Q. Okay. And -- and before we go on to  
8 inducement to infringe, can we just clarify that the DS  
9 100 quad, for the same reasons it infringed Claim 16,  
10 what is your opinion with respect to whether the  
11 Claim 17 of the '978 patent is infringed with respect to  
12 the DS 100 quad with two or more monitors?

13 A. With two or more monitors, for the reasons I  
14 described previously, I found that the DS 100 quad would  
15 also infringe Claim 16 and 17.

16 Q. Thank you. 17?

17 A. Yes, you interrupted me. I said and 17, sir.

18 MR. NELSON: Let's see next slide,  
19 please.

20 Q. (By Mr. Nelson) And, Dr. Akin, did you  
21 perform an analysis of the LX system as well to  
22 determine infringement with respect to Claim 16 and  
23 Claim 17 of the '978 patent?

24 A. Yes, sir.

25 Q. And what was your conclusion there?

1           A.       That the LX Ergotron dual display with two  
2 displays attached would also infringe Claim 16 of the  
3 '978 patent.

4           Q.       Okay.

5                   MR. NELSON:   Let's show this.   Next  
6 slide, please.

7           Q.       (By Mr. Nelson) Dr. Akin, what are we looking  
8 at here in Plaintiffs' Exhibit 640?

9           A.       This is an advertisement from Ergotron  
10 offering to sell its stand with two displays attached  
11 for use by a single viewer.

12          Q.       Okay.   And, Dr. Akin --

13                   MR. NELSON:   Next slide please.

14          Q.       (By Mr. Nelson) -- what is your opinion with  
15 respect to whether the DS 100 has the highlighted  
16 elements of Claim 16?

17          A.       In my opinion, it has the highlighted  
18 elements of Claim 16.

19          Q.       Okay.   And can you just explain that, please,  
20 to the jury?

21                   Maybe we can go back a slide and you can  
22 point out either at the table or in the photo about  
23 where those elements are.   Whatever is easier for you.

24                   THE WITNESS:   I don't see a photo, so I  
25 will approach the exhibit, if I may, Your Honor.



1 THE COURT: Yes, you may.

2 MR. NELSON: Let's go back a slide.

3 A. Yes, sir.

4 As I said, with a pair of displays, this  
5 would be a display system. You see that we have a  
6 lowermost portion, according to the arm above a surface,  
7 so we have a base member.

8 It's intended to be used with a pair of  
9 electronic displays for visually displaying information.  
10 We have an arm assembly here, this silver part.

11 Q. Okay.

12 A. That's connected to and projects from a  
13 supporting upright.

14 Q. Thank you, sir. I think that's probably --  
15 okay.

16 Why don't you go back to the witness stand.

17 A. Yes, sir.

18 Q. And, Dr. Akin, before we move on from this  
19 slide, did you reach an opinion with respect to the  
20 positioning means for positioning the displays with  
21 respect to that element?

22 A. Yes. I found all three of the A, B, and C  
23 paragraphs that are found in the Ergotron LX dual.

24 Q. Okay. And --

25 MR. NELSON: Let's go to the next slide,

1 please.

2 A. All right, sir.

3 Q. (By Mr. Nelson) And what are we looking at  
4 here, the support means?

5 A. Here, we're looking at the support means,  
6 yes, sir.

7 Q. Okay.

8 MR. NELSON: Next slide.

9 Q. (By Mr. Nelson) And, again, Dr. Akin, please  
10 tell the jury what we're looking at here.

11 A. Well, here, we see the Court's function  
12 definition in the table; the function of supporting the  
13 arm assembly from the base member.

14 Q. Okay. And, Dr. Akin, what is your  
15 conclusions with respect to whether the LX has the  
16 function of supporting the arm assembly from the base  
17 member?

18 A. It has that function.

19 Q. And, Dr. Akin, what is your conclusion with  
20 respect to whether the LX performs the function of  
21 supporting the arm assembly from the base member in  
22 substantially the same way as the patent structure?

23 A. Well, it has that function of using variable  
24 pressure and friction to support the arm assembly from  
25 the base member, sir.

1 Q. Okay. And why is that, Dr. Akin?

2 A. Why is that? I don't follow your question.

3 Q. Well, I'm sorry. How -- that's a bad  
4 question.

5 How does the LX perform the function of  
6 supporting the arm assembly from the base member in  
7 substantially the same way as the patent structure?

8 A. Well, this is a more complicated joining  
9 structure than the other two devices that we looked at.  
10 Hidden inside the upright where you cannot see it in  
11 this figure, there are some other mechanisms.

12 There is a pair of springs that are inside  
13 designed to support part of the weight of the display  
14 and the arm, and there's also the friction brake inside  
15 here and some ball bearings and rails. And so that --  
16 that structure inside the LX device combines in a  
17 similar way to use variable pressure and frictions  
18 through those more complicated joints to support the  
19 member.

20 This particular member has other features  
21 that are not addressed in the claim, such as the ability  
22 to raise and lower the display.

23 Q. Thank you, Dr. Akin.

24 Did you analyze the results achieved by the  
25 LX structure you just discussed as compared to the

1 claims in the patent -- in the structure in the patent?

2 A. Yes, sir.

3 Q. What was your conclusion with respect to  
4 that?

5 A. Well, the arm is connected, again, to the  
6 front of the upright slider, which is somewhat in front  
7 of the support stand. It transmits its weight and the  
8 overturning effect of the weight and the arm and the  
9 display through the stationary joint in a substantially  
10 similar way by using variable pressures and frictions to  
11 transmit that weight and torque to -- through the  
12 upright onto the base.

13 Q. Okay. And so, Dr. Akin, I think we've  
14 discussed the function and the way and the result for  
15 this claim or this element of the claim.

16 In your opinion, does the LX have the claimed  
17 support means?

18 A. In my opinion, it does have the support means  
19 of the Claim 16.

20 Q. Okay.

21 MR. NELSON: Let's please go to the next  
22 slide.

23 Q. (By Mr. Nelson) Dr. Akin, what is your  
24 opinion with respect to whether the LX has the mounting  
25 means as discussed in the patent?

1           A.       The LX has equivalent structure to the  
2 mounting means displayed in the patent.

3           Q.       And, Dr. Akin, is this also a  
4 means-plus-function claim?

5           A.       Yes. Again, this is the same  
6 means-plus-function display -- claim that we discussed  
7 earlier.

8                   MR. NELSON: Okay. Let's go to the next  
9 slide.

10          Q.       (By Mr. Nelson) What are we looking at here,  
11 Dr. Akin?

12          A.       We see in the top right the Court's table  
13 definition of the function of mounting the displays to  
14 the arm assembly.

15                 You can see here that again there are two  
16 mounting plates or display support plates, and they  
17 attach to the rear of the display. Then they are joined  
18 again to a vertical hinge but a different type of  
19 vertical hinge, which is then clamped onto the arm.  
20 So the structure in this case is that structure I just  
21 identified, vertical hinge 7, the display plates 2,  
22 connected to the arm assembly 3, and I generally call  
23 that a connector, No. 12.

24          Q.       Thank you Dr. Akin.

25                 MR. NELSON: Let's go to the next slide.

1                   Actually, before we go to the next slide,  
2 let's go back one slide.

3           Q.       (By Mr. Nelson) Dr. Akin, what is your  
4 opinion with respect to whether the structure in the LX  
5 performs the function of mounting the displays to the  
6 arm assembly in substantially the same way as Figures 8,  
7 9 of the patent and Figures 19, 20 of the patent?

8           A.       It is my opinion that it does support them in  
9 substantially the same way to accomplish substantially  
10 the same result.

11          Q.       And let's spend a little bit of detail on  
12 substantially the same way part.

13                   Could you please tell the jury why the LX has  
14 substantially the same way as the structure within the  
15 '978 patent for both Figures 8, 9 and also for Figures  
16 19, 20?

17          A.       Yes. So once again in this case, we have  
18 another vertical hinge. It's a slightly different  
19 shape. It's being squeezed together. It develops  
20 bearing pressures and frictions, the combination of  
21 which will transmit the weight from in front of the arm  
22 of the display and that overturning torque from that  
23 little offset distance by variable pressure and friction  
24 through that rotational joint to the arm, basically in a  
25 substantially similar way to the way that the ball joint

1 accomplishes it in the patented structure for those  
2 figures.

3 Q. And, Dr. Akin, how does the load transfer  
4 affect your analysis with respect to this mounting  
5 means?

6 A. The load is transferred through this joint  
7 with its overturning torque by means of variable  
8 pressure and friction, sir.

9 Q. Okay. Thank you.

10 And again just to be clear, Dr. Akin, where  
11 is the display mounted from?

12 A. Well, once again, in this image, we can only  
13 see the display support plates, but they are intended to  
14 connect to the rear of the display using a standard --  
15 industry standard connection points.

16 Q. Thank you.

17 What is the result achieved by the mounting  
18 structure of the LX device?

19 A. It supports the arm assembly from the base,  
20 which is identically the same result as the patented  
21 structure.

22 Q. How does this compare to the result -- I  
23 think you just said this actually. It's the identical  
24 result, is that right, as the patented structure?

25 A. Yes, sir.

1 Q. Okay. In your opinion, does the LX have the  
2 mounting means of Claim 16?

3 A. In my opinion, it does, sir.

4 MR. NELSON: And let's go to the next  
5 slide, please.

6 Q. (By Mr. Nelson) Dr. Akin, did you also  
7 analyze where the LX has a means for adjusting with  
8 respect to Claim 16, Subpart C of the patent?

9 A. Yes, I did.

10 Q. And what was your conclusion with respect to  
11 that?

12 A. Well, it has the same structure that we just  
13 talked about. Again, a vertical hinge accomplishes this  
14 side-to-side motion.

15 MR. NELSON: The next slide, please.

16 Q. (By Mr. Nelson) Is that what you're  
17 discussing, Dr. Akin?

18 A. Yes.

19 Q. Just to remind the jury, what is the function  
20 as described in the Court's construction for means for  
21 adjusting for this element?

22 A. Well, it has to be able to adjust each of the  
23 displays relative to the arm assembly.

24 Q. Okay. And, again, Dr. Akin, what did you  
25 conclude with respect to whether the LX has the claimed



1 function in the Court's opinion?

2 A. Well, I concluded it does have this element.

3 Q. Dr. Akin, could you please compare the LX  
4 hinge portion and whether it performs the result in  
5 substantially the same way for adjusting the angular  
6 orientation as the figures disclosed in Figures 8 and 9  
7 of the patent and Figures 19 and 20 of the patent?

8 A. Well, as I discussed previously, hinge joints  
9 have a limitation or kinematic constraint so that the  
10 surfaces hold the center of the joint in a fixed  
11 position behind the display or relative to the arm. It  
12 helps keep the joint in a fixed position and allows only  
13 one axis of rotation.

14 In this case, that one axis of rotation is  
15 the side-to-side motion relative to the arm so that each  
16 display can be rotated towards another.

17 Q. Dr. Akin, did you analyze the result achieved  
18 by the LX hinge structure and the patent structure?

19 A. Yes, I did.

20 Q. And what -- what conclusion did you reach  
21 with respect to results?

22 A. Well, again, the results have to be  
23 substantially the same. They were identically the same  
24 in this case. But it does allow that each display to be  
25 moved relative to one another, relative to the arm, and

1 relative to one another.

2 Q. Thank you.

3 So just to conclude this -- this element for  
4 the jury, in your opinion, does the LX have the  
5 adjusting means of Claim 16?

6 A. In my opinion, it does.

7 Q. Thank you.

8 And, finally, let's turn to the last portion  
9 of the claim --

10 MR. NELSON: Actually, let's go to this  
11 slide. Next slide please.

12 Q. (By Mr. Nelson) And what are we looking at  
13 here, Dr. Akin?

14 A. This is an image taken from one of the  
15 Ergotron advertisements that shows a top view, once  
16 again, of the monitors, showing that the vertical hinge  
17 keeps the hinge joint center at one location and then  
18 rotates about that single axis to accomplish the  
19 side-to-side motion.

20 Q. And if we go down to the big blowup over  
21 there, what is your opinion with whether the LX allows  
22 the user to angle towards one another -- the displays  
23 towards one another to a desired degree?

24 A. I also find that element present in the LX,  
25 sir.

1 Q. And why is that, Dr. Akin?

2 A. Well, for the same reason that the user has  
3 some desire to adjustment for glare or comfort, that  
4 they can move either one or both of the displays to  
5 accomplish some desired degree of rotation.

6 Q. And, Dr. Akin --

7 MR. NELSON: Let's go to the next slide  
8 please. Next slide.

9 Q. (By Mr. Nelson) Did you -- what did you  
10 conclude with respect to whether the LX infringes  
11 Claim 17 of the '978 patent?

12 A. Well, again, it has to have the pair of  
13 electronic displays mounted and satisfy these additional  
14 elements beyond those of Claim 16, which is to have the  
15 arm above a support surface, that it has to have the  
16 rotation about a generally vertical axis, and the  
17 displays have to be able to move relative to one  
18 another.

19 And for the reasons that I described before,  
20 for all the elements that are identical, plus I find  
21 these additional elements -- in the LX dual, I find that  
22 it also infringes Claim 17.

23 Q. Thank you.

24 And so with respect to all of the claims and  
25 all the two -- actually, the three Ergotron products

1 we've discussed -- the DS 100 horizontal, the DS 100  
2 quad and then the LX -- were they based upon  
3 consideration of the accused devices with two or more  
4 monitors?

5 A. I -- my understanding is that their sole use  
6 is to be used with two or more monitors, but I didn't  
7 quite follow your question.

8 Q. I'm sorry. Just to be clear for the jury, I  
9 want to make -- for example, let's go back to the quad.  
10 The quad has the ability to have two or more. Can it  
11 have up to four monitors on that?

12 A. Yes.

13 Q. Does that change your opinion about whether  
14 it infringes Claim 16 and Claim 17 of the '978 patent?

15 A. No. It would just have to have at least a  
16 pair of monitors.

17 Q. Thank you.

18 In all your opinions given today, have you  
19 applied the Court's claim construction definitions?

20 A. I have.

21 Q. Thank you.

22 And finally, Dr. Akin, I want -- did you  
23 analyze also the Claim -- Claim 16 and 17 about whether  
24 that Claim 16 and 17 are embodied in Mass Multiples'  
25 product?

1           A.       I did.

2                   MR. NELSON: May I approach, Your Honor?

3                   THE COURT: Yes, you may.

4           Q.       (By Mr. Nelson) And, Dr. Akin, could you just  
5 tell the jury really briefly why you are analyzing  
6 whether Mass' product falls within Claim 16 of the '978  
7 patent?

8           A.       I had to analyze this, because in order to  
9 recover damages for lost sales of their own product, I  
10 have to verify that their own product meets each and  
11 every element of the claims in the patent, the '978  
12 patent.

13          Q.       In general, Dr. Akin, what was your  
14 conclusion regarding the Mass products?

15          A.       My conclusion was that the Mass product does  
16 satisfy Claim 16 '978 patent.

17          Q.       Let's just run through them really quickly.  
18                   Is the Mass product a display system?

19          A.       Yes, sir. My understanding is up to this  
20 date that they've only been sold with the displays  
21 attached and manufactured by Mass.

22          Q.       And does the Mass product have a base member?

23          A.       It does have a base member in the lowermost  
24 portions, according to arm assembly.

25          Q.       Does it have a pair of electronic displays?

1           A.       It does have a pair of electronic displays.

2           Q.       Does it have positioning means for  
3 positioning displays?

4           A.       Yes. I find each of the three subparagraphs  
5 present in that device.

6           Q.       Does the Mass product have an arm assembly  
7 for supporting the displays?

8           A.       Yes. It has an arm assembly.

9                    If you turn the device around, I'm sure the  
10 jury could see that it's connected to, projecting from  
11 one or more constituent parts to be supported above the  
12 base -- from the base.

13          Q.       And, Dr. Akin, did you review this product  
14 assembled?

15          A.       Yes. I reviewed it assembled and  
16 disassembled.

17          Q.       Okay. And with respect to support means,  
18 what was your conclusion with respect to whether the  
19 Mass product had the function that the Court identified  
20 for support means in Claim 16 of the patent?

21          A.       It had that function.

22          Q.       And, Dr. Akin, what did you conclude with  
23 whether the Mass product operated in substantially the  
24 same way as the structure identified in the patent?

25          A.       Well, it wasn't really necessary for me to do

1 a function-way-result test.

2 Q. Why was that?

3 A. It's because I found the exact structure for  
4 the support means as outlined and claimed in the patent.

5 Q. And thank you, Dr. Akin.

6 Let's now go to mounting means. What did you  
7 conclude with respect to mounting means and whether the  
8 Mass device has the mounting means as discussed in claim  
9 '978 -- or Claim 16, Item (c) of the '978 patent?

10 A. I found that it does have the mounting means  
11 of Claim 16, Part (c).

12 Q. Okay. And does the Mass product have  
13 structure that mounts the displays to the arm assembly  
14 and that adjusts the angular orientation of each of the  
15 displays relative to the arm assembly?

16 A. Yes, it does.

17 Once again, there is a rotational joint  
18 attached to the rear of the display; in this case, it's  
19 ball joint. It's then connected to the arm, and it does  
20 have the means for adjusting as outlined here in  
21 Paragraph (c).

22 Q. Is the structure in the Mass patent identical  
23 to the structure identified by the Court for performing  
24 those functions?

25 A. Yes, sir.

1 Q. And finally, I want to turn to this last  
2 element, which is angled toward each other to a desired  
3 degree.

4 A. Yes, sir.

5 Q. And, Dr. Akin, what is your conclusion as to  
6 whether the displays can be angled towards each other to  
7 a desired degree?

8 A. My examination of the device showed that it  
9 had that ability, sir.

10 Q. And, Dr. Akin, in your opinion, therefore,  
11 does the Mass product contain each and every element of  
12 Claim 16 of the '978 patent?

13 A. In my opinion it does, sir.

14 Q. Thank you. Thank you, Dr. Akin.

15 MR. NELSON: We will pass the witness.

16 THE WITNESS: Thank you, sir.

17 THE COURT: All right.

18 Cross-examination.

19 MR. NIEDERLUECKE: Your Honor, we just  
20 need a minute to set up.

21 CROSS-EXAMINATION

22 BY MR. NIEDERLUECKE:

23 Q. Good afternoon, Dr. Akin.

24 A. Good afternoon.

25 Q. Good to see you.



1           A.       Good to see you, sir.

2           Q.       Dr. Akin, do you have copies of your reports  
3 up there with you?

4           A.       No, sir.

5           Q.       It might help you, if I refer to them.

6                   MR. NIEDERLUECKE: May I approach, Your  
7 Honor?

8                   THE COURT: Yes, you may.

9                   MR. NIEDERLUECKE: Thank you.

10                  THE WITNESS: Thank you, sir.

11           Q.       (By Mr. Niederluecke) Dr. Akin, I would like  
12 to try to start at a point where I think we can reach  
13 some agreements, okay?

14           A.       All right, sir. Yes, sir.

15           Q.       That's always a good place to start.  
16 I understand from your testimony in this case --

17                   MR. NIEDERLUECKE: And, Your Honor, is it  
18 okay if I move back and forth to the table?

19                   THE COURT: Yes, uh-huh.

20                   MR. NIEDERLUECKE: Thank you.

21           Q.       (By Mr. Niederluecke) I understand from your  
22 testimony in this case that the DS 100 product -- can  
23 you see it okay from there?

24           A.       Yes, sir, I can. Thank you.

25           Q.       As it sets on that table does not infringe

1 the '978 patent, correct?

2 A. No, sir, that's not correct.

3 Q. That product right there, as it sets on that  
4 table, you believe, in your expert opinion, infringes  
5 the '978 patent?

6 A. It indirectly infringes, yes, and contributes  
7 to others to infringe.

8 Q. Okay. But indirect infringement and  
9 contributory infringement require more than just the  
10 object, right?

11 A. Yes. It requires that you offer to sell the  
12 monitors or mount the monitors with it or other  
13 features.

14 Q. And it requires knowledge of the patent,  
15 doesn't it?

16 A. Yes, sir.

17 Q. And it requires an actual intent to cause an  
18 infringement, doesn't it?

19 A. I would agree with that, because it requires  
20 knowledge of the patent; and, therefore, if you knew of  
21 the patent -- yes, I would agree with that.

22 Q. Okay. So knowledge and intent is what we  
23 need in addition to this device, okay? Correct?

24 A. I think that's correct, sir. I would  
25 probably have to review the law section of my report

1 here, if you would like me to do that.

2 Q. Well, if you want to, that's why I put it  
3 there, because I know you've got some law laid out in  
4 there that you analyzed your system by.

5 Did you want to take the time to do that?

6 A. You're asking me about the contributory or  
7 inducement infringement?

8 Q. Yes.

9 A. Which one are we talking about at this point,  
10 sir?

11 Q. Let's -- let's -- well, we can -- I think --  
12 well, let's look at inducing infringement, if you turn  
13 to Page 10 of your report.

14 A. Yes, sir, I'm there.

15 Q. Would you agree to induce infringement, it  
16 takes an active and knowing, aiding, and abating of  
17 another's direct infringement, right?

18 A. I'll have to read this, sir. Do you see that  
19 here?

20 Q. Under inducing infringement.

21 A. Yes, I'm there.

22 Q. And right in your --

23 A. Yes, that's correct.

24 The legal definition is that it must -- the  
25 Defendant must actively and knowingly aid and abet

1 another's direct infringement.

2           Also, the inducer must have actual or  
3 constructive knowledge of the patent and must intend to  
4 induce infringement. However, either direct evidence or  
5 circumstantial evidence may be sufficient to prove  
6 intent.

7           Inducing infringement may include selling  
8 components that are used in an infringing apparatus with  
9 the knowledge and the intent that its customers would  
10 directly infringe by using components to make, use, or  
11 sell the patented invention as well as instructing or  
12 directing -- I think it should say others -- to perform  
13 the infringing acts through labels, through  
14 advertisement, or through sales activities.

15           Q.     And that's the law under which you conducted  
16 your analysis, correct?

17           A.     Yes, sir.

18           Q.     And you understand, ultimately, the Court  
19 here will provide the actual law, right?

20           A.     Of course, sir.

21           Q.     So we have something called literal  
22 infringement. Do you understand that, Doctor?

23           A.     Yes, sir.

24           Q.     Okay. So for literal infringement, we have  
25 direct infringement, correct? That's one element -- one

1 type of literal infringement?

2 A. Yes, sir.

3 Q. And then there's another type called  
4 indirect, correct?

5 A. Yes, sir.

6 Q. Okay. And we were just discussing indirect,  
7 right?

8 A. Yes, sir. We were discussing one of the two  
9 types, and then direct.

10 Q. And now that you've reviewed that, would you  
11 agree that indirect requires not only that you show  
12 ultimately all the elements are put together, but that  
13 you also show knowledge of the patent and intent of the  
14 indirect infringer, correct?

15 A. Correct.

16 Q. So let's deal with direct infringement --

17 A. All right, sir.

18 Q. -- okay?

19 A. Yes.

20 Q. Would you agree that this device, as it sets  
21 here right now, the DS 100 does not directly infringe  
22 the '978 patent?

23 A. It would not directly infringe until you  
24 attach two displays.

25 Q. Okay. Until you attach two displays. And I

1 think that's what you said in your direct testimony as  
2 well, correct?

3 A. I think so, sir.

4 Q. So if I have those two stands and that -- I  
5 have this stand and have these two individual Dell  
6 monitors, we still haven't reached a part where we've  
7 reached direct infringement, have we?

8 A. Well, that depends, sir. Did you sell the  
9 monitors with the stand or offer to sell the monitors  
10 with the stand, or do they just belong to somebody else  
11 that has no association with the stand?

12 Q. I'm saying, as they set there right now, do  
13 they directly infringe? Do they meet all of the  
14 elements of the '978 patent right here?

15 A. Without the displays attached to the device,  
16 then the DS 100 only indirectly infringes.

17 Q. So we are in agreement that as long as  
18 they're not attached, we don't have direct infringement?

19 A. No, we don't have an agreement, sir.

20 Q. I thought that's what you just said.

21 A. No. I said if you -- if you also offered to  
22 sell those monitors or did sell those monitors with the  
23 display, even though they're not physically attached,  
24 then it's a direct infringement.

25 Q. Okay. So now it doesn't take the attachment

1 anymore; is that right?

2           You just told me a minute ago that to be  
3 infringing, as you kept clarifying with Mr. Nelson, the  
4 Plaintiffs' attorney, that it has to be attached to be  
5 infringed, because that's what the claim says, right?

6           A.     I don't think that's the interpretation, sir.  
7 My understanding of direct infringement is, if you offer  
8 to sell an infringing combination or infringing system  
9 or sell, then that's a direct infringement.

10          Q.     Isn't that called contributory infringement?

11          A.     There is a second indirect infringement that  
12 is known as contributory infringement where you  
13 contribute to others forming or selling an infringing  
14 configuration.

15          Q.     Both contributory and inducement of  
16 infringement require knowledge and intent, correct?

17          A.     They both require knowledge -- I'm reading,  
18 sir. If you will let me pause for a moment, I'm reading  
19 the terms.

20                 I would agree with that, because it says it  
21 has to take place with knowledge, that the components  
22 were especially made or adopted for use in an infringing  
23 product, to be a portion of contributory infringement.

24          Q.     Does the '978 patent require that the  
25 monitors be attached to the stand?

1           A.       The '978 patent requires that the stand be  
2 used with a pair of monitors for a single user.

3           Q.       Do they have to be attached, or can they just  
4 be setting there, like those two single stands are right  
5 now?

6           A.       I think the logical conclusion is, sir, they  
7 have to be physically attached.

8           Q.       Okay. Thank you.

9                   And so the stands don't infringe until those  
10 monitors are mounted to them, correct?

11          A.       No, sir. They indirectly infringe without  
12 the presence of the monitors, and they directly infringe  
13 if the monitors are mounted or if the monitors are sold  
14 with the stand or offered to be sold with the stand.

15          Q.       Do you recall having your deposition taken,  
16 Mr. -- Dr. Akin?

17          A.       Yes, sir, I do.

18          Q.       And you were under oath at that deposition,  
19 correct?

20          A.       That is correct, sir.

21          Q.       And I assume you did your best to give an  
22 accurate and truthful answer, correct?

23          A.       I always try to, sir.

24                   MR. NIEDERLUECKE: Page 124, Counsel.

25                   MR. NELSON: 124?



1 MR. NIEDERLUECKE: Yes, Page 124 of the  
2 first day on the 19th, Lines 9 through 14.

3 There we go.

4 Q. (By Mr. Niederluecke) Dr. Akin, at that  
5 deposition, is it correct that I asked you, Do you  
6 understand the difference between contributory  
7 infringement and direct infringement?

8 A. Yes, sir, I see the question.

9 Q. And you said, yes, I do, didn't you?

10 A. Yes, sir.

11 Q. Then I asked you to directly infringe, there  
12 has to be two monitors mounted on the DS 100 stand,  
13 correct?

14 Do you see that?

15 A. Yes, that's what I said.

16 Q. And what was your answer?

17 MR. NELSON: Your Honor, may we approach,  
18 please?

19 THE COURT: Yes, you may.

20 (Bench conference.)

21 MR. NELSON: I think he is about to  
22 violate the limine about any witness giving a conclusion  
23 on the ultimate conclusion of law. It's certainly up to  
24 this Court about this.

25 I think it's going to be pretty clear in

1 the jury instructions that direct infringement includes  
2 offers to sell, make, use, or offer for sale. So if  
3 he's trying to get our expert to say that it's not an  
4 offer for sale, as a matter of law, to be direct  
5 infringement, that's completely improper and outside of  
6 the limine.

7 MR. NIEDERLUECKE: Your Honor, he's  
8 already testified that there is contributory  
9 infringement inducement. He's -- he's given his  
10 testimony to the ultimate conclusion to these three.

11 I'm just cross-examining him on his  
12 position, because he already said in his deposition they  
13 don't directly infringe.

14 MR. NELSON: I think he was pretty clear  
15 on the stand, but, regardless, it's a conclusion. We  
16 agreed, I think, on this limine. That conclusion goes  
17 to ultimate issues of law which go to jury instructions,  
18 and I think it's an agreed jury instruction on this,  
19 that an offer of sale, make, use, or sell, offer for  
20 sale, it doesn't matter. And I think he's going for  
21 jury nullification here to go around the jury  
22 instructions here.

23 It doesn't matter what he says the answer  
24 to this question, because the Judge is going to instruct  
25 the jury in the jury instructions.

1 THE COURT: I will sustain the objection.

2 MR. NIEDERLUECKE: Your Honor, can I  
3 ask -- my point being, he's already -- he's already  
4 admitted -- I won't ask him anything about offer for  
5 sale. I'll stay away from that.

6 He's bringing it up. I don't have any  
7 desire to talk about that, but what I do want to talk  
8 about is whether he's admitted that the Defendants don't  
9 directly infringe, which he has.

10 MR. NELSON: It's the same thing. This  
11 goes to the exact same issue, Your Honor, about -- about  
12 whether there's a make, use, or offer for sale, and  
13 that's what he's trying to say, and I think he said it  
14 four times now that they do, because they offered for  
15 sale, and he's trying to go around it.

16 MR. NIEDERLUECKE: Can I bring his  
17 report -- in his report, he opines as to the law and  
18 designs that there is direct infringement, there's  
19 inducement, and there's contributory infringement.  
20 How do I cross-examine the witness, the expert, who  
21 stands up and says that to the jury, if I don't have the  
22 ability to say you're wrong and you said -- you didn't  
23 say that in your deposition?

24 MR. NELSON: But, Kurt, the problem is,  
25 you're going to the problem --

1 MR. NIEDERLUECKE: I'm not.

2 MR. NELSON: But you are completely  
3 forgetting about offers for sale, and that is, again, an  
4 ultimate conclusion of law.

5 Go ahead and cross-examine him on any  
6 point related to his opinions about what he's actually  
7 said, but to bring in something about whether there's a  
8 make, use, or offer for sale. That goes, again, to an  
9 ultimate conclusion.

10 MR. NIEDERLUECKE: I will not, Your  
11 Honor. I won't bring up offer for sale. He may bring  
12 it up, but I won't. I'm not going to question him on  
13 offer for sale.

14 THE COURT: Okay.

15 (Bench conference concluded.)

16 Q. (By Mr. Niederluecke) Dr. Akin --

17 A. Yes, sir.

18 Q. -- none of the Defendants in this case sell a  
19 stand with monitors mounted to it, do they?

20 A. I think I have shown in my testimony this  
21 morning, sir, that there are several advertisements  
22 where they are offering to sell the stands.

23 So is your question, do they offer to sell  
24 them or to mount them?

25 Q. To actually sell them is my question.

1           Isn't it true that none of the Defendants in  
2 this case, including the distributor, Tech Data, the  
3 resellers, or for that matter, Ergotron, actually sell  
4 stands that are mounted to displays?

5           A.     Well, I certainly demonstrated that you offer  
6 them to be sold, and the only logical conclusion would  
7 appear to me would be that their sole intent is to be  
8 attached to the stand, because otherwise it has no  
9 commercial value. The stand doesn't have commercial  
10 value.

11          Q.     So you're saying there is, you believe in  
12 your mind, intent, right?

13          A.     Yes, sir.

14          Q.     Okay. And that's one of the elements of  
15 inducement and contributory infringement, correct?

16          A.     Yes, sir.

17          Q.     Now, you mentioned knowledge of the patent is  
18 one of the requirements for indirect infringement,  
19 right?

20          A.     Yes, sir.

21          Q.     Are you familiar with a number of Defendants  
22 in this case?

23          A.     Of course, sir.

24          Q.     Let's talk about Tech Data Corporation.

25          Mr. Kevin Tiesmann is over there representing Tech Data

1 Corporation.

2 A. Yes, sir.

3 Q. Tech Data Corporation didn't have any  
4 knowledge of the '978 patent until the Plaintiffs sued  
5 them; isn't that correct?

6 A. I believe that's correct, sir.

7 Q. Okay. So before July of 2006, Tech Data, in  
8 your opinion, doesn't infringe; isn't that right?

9 A. Unless I'm mistaken and they were included in  
10 some of the e-mails in 2001 and 2003, but I don't think  
11 they were, sir.

12 Q. And similarly July of '06, they can't be  
13 contributorially infringing prior to that date?

14 A. Well, that would be a question of law. If  
15 you're correct in your dates, that would be my  
16 impression.

17 Q. You don't have any evidence that either --  
18 that Tech Data had knowledge?

19 A. Of the patent before they were filed with  
20 notice of this suit?

21 Q. Yes.

22 A. Not that I recall, sir.

23 Q. And the same was true with CDW,  
24 unfortunately, Tommy Hines isn't here; he had to go to  
25 the hospital.

1 A. Sorry to hear that.

2 Q. Hopefully, he will be back.

3 But CDW -- isn't it also true that you didn't  
4 have any evidence that they knew of the patent before  
5 July of 2006, when they got sued; isn't that correct?

6 A. I don't recall them being aware of it before  
7 that date, sir.

8 Q. So if -- if they're -- if there was any  
9 reason to say any of these products infringed  
10 indirectly, those two companies couldn't be infringing  
11 until July of 2006 and later, right?

12 A. If you're correct about the dates, I would  
13 agree, sir.

14 Q. Now, Dr. Akin, as we heard your testimony,  
15 you conducted an infringement analysis of the DS 100  
16 dual, correct?

17 A. Correct, sir.

18 Q. The DS 100 quad, correct?

19 A. Yes.

20 Q. And the LX dual, correct?

21 A. That's correct.

22 Q. And you would agree that the discussion we  
23 just went through applies to all three of those equally,  
24 right?

25 A. The discussion of direct and indirect

1 infringement, yes.

2 Q. Now, with regard to the DS 100 --

3 A. All right, sir.

4 Q. I'm trying to find more common ground for us.

5 We -- in fact, I'm going to step back, and I'm going to

6 point you to your report and make sure we understand

7 what tests you applied -- what legal tests you were

8 applying when you came to your opinions.

9 If you turn to Page 9.

10 A. Of the DS 100 report, sir?

11 Q. Yes.

12 A. I'm there.

13 Q. Okay. And I'm talking about literal

14 infringement, right?

15 A. All right.

16 Q. Do you see that?

17 A. Yes, I see that section.

18 Q. And that's what you -- that's what your

19 opinion was based on, was literal infringement today,

20 correct?

21 A. It was based on literal infringement, direct

22 and indirect, yes.

23 Q. Okay. Okay. And would you read the first

24 sentence of -- of the understanding -- the legal

25 understanding you had and what you applied to determine



1 direct infringement?

2 A. I understand that literal infringement exists  
3 if the accused device exactly meets all of the  
4 limitations of at least one claim of the patent at  
5 issue, period.

6 A claim limitation written in  
7 means-plus-function form, reciting a function to be  
8 performed rather than definite structure, subject to the  
9 requirements of the U.S. -- or U.S.C. is a legal  
10 paragraph -- pardon me -- subject to the sub --  
11 requirements of Section 35 U.S.C., Paragraph 112,  
12 Subsection 6 of 1994.

13 Q. And, Dr. Akin, that's -- unless you -- if you  
14 want to read more, you can, but that's all I think --  
15 just my question was in that first one.

16 A. All right, sir.

17 Q. So in that first sentence, so the accused  
18 device exactly meets all of the limitations of at least  
19 just one claim, right?

20 A. Yes, sir.

21 Q. Now, we're going to talk about -- I hope I  
22 don't trip over all this stuff, but we're going -- I'd  
23 like to talk with you a little bit about the tests you  
24 applied and this somewhat confusing language, this  
25 means-plus-function stuff --

1 A. Yes, sir.

2 Q. -- okay?

3 And what you applied was a test  
4 means-plus-function, right?

5 A. Yes.

6 Q. And it's called the function-way-result test,  
7 right?

8 A. That is correct.

9 Q. Okay. And that has -- and that's how you  
10 compared the structure of what was in the patent with  
11 the structure of the accused device to determine -- your  
12 words were the device -- accused device meets all of the  
13 limitations.

14 A. If it has an equivalent structure, yes.

15 Q. Yes. So we're looking at structure to  
16 structure.

17 A. Structure to equivalent structure.

18 Q. And we apply a three-part test?

19 A. Correct.

20 Q. Function?

21 A. Yes.

22 Q. Way?

23 A. That's correct.

24 Q. And result; is that correct?

25 A. Yes, sir.

1 Q. Now, is it your understanding that in order  
2 for a corresponding structure in the accused product,  
3 the DS 100 stand -- you have to meet all three of these  
4 tests, at least that they are substantially the same,  
5 right?

6 A. Substantially similar, yes, sir.

7 Q. And even if one's missing, it doesn't  
8 infringe, does it?

9 A. You're correct, sir.

10 Q. Now, I think we -- from your testimony, I  
11 think we agree that -- what I want to talk about first  
12 is the mounting means.

13 A. All right, sir.

14 Q. And we agree that none of Ergotron's products  
15 that you're accusing have the identical structure,  
16 right?

17 A. That is correct, sir.

18 Q. Okay. So we're down to this test?

19 A. We're at this function-way-result test.

20 Q. In your function-way-result test -- let me  
21 get my notes up here -- you talked about variable  
22 pressure and friction.

23 A. Correct.

24 Q. And I think that was the general basis for  
25 your finding of -- that it was -- worked in the same

1 way, right?

2 A. That the variable pressure and friction  
3 developed in such a way that they transmit both the  
4 weight of the arm and display through the rotational  
5 joint, along with the overturning torque of that weight.

6 Q. Okay. And -- are you done?

7 A. Yes.

8 Q. Okay. Similarly, with the -- for supporting  
9 the arm assembly, you relied on variable pressure and  
10 friction, right?

11 A. That's correct.

12 Q. When I walk across the floor, am I applying  
13 variable pressure and friction to be able to walk?

14 A. You are, sir.

15 Q. I am?

16 So am I equivalent to the structure in the  
17 patent if I walk across the floor holding these two  
18 things in my arm?

19 A. No, sir.

20 Q. Okay. But I had variable pressure, and I had  
21 variable friction, didn't I?

22 A. Yes.

23 Q. Thank you.

24 Dr. Akin, what is -- let's -- let's talk  
25 about the mounting means.

1 A. All right, sir.

2 Q. Okay. What is the result -- let's talk about  
3 the DS 100.

4 What is the result of the mounting means of  
5 the DS 100?

6 A. It securely and safely mounts the displays to  
7 the arm assembly.

8 Q. And you believe that's the identical function  
9 the patent does, correct?

10 A. I thought you asked me about results, sir.

11 Q. I'm sorry. Thank you.

12 The -- the -- it's the identical result that  
13 you believe the patent has -- the patent structure has;  
14 is that correct?

15 A. I'd have to go back and review that claim  
16 element. I don't have the claim in front of me, sir.

17 Q. Well, didn't you just testify to this whole  
18 test of --

19 A. Yes, sir.

20 Q. -- function-way-result?

21 A. Yes.

22 Q. And -- and -- and you got -- you've given me  
23 the results here, and I thought, in your direct  
24 testimony, you said that's the same result --

25 A. Yes, sir.

1 Q. -- that the structure in the patent has.

2 A. Yes, sir, if I recall.

3 Q. Okay. So let's -- what I want to do here --  
4 and I apologize. This is -- I didn't have a fancy slide  
5 presentation, so I'm a little slower than Mr. Nelson.  
6 But what I want to do here and I want to put up the  
7 function here. I want to make sure we can see this,  
8 okay?

9 Here's the function of Claim 16.

10 A. I see that, sir.

11 Q. And -- and can you read us the function?

12 A. Mounting the displays to the arm assembly.

13 Q. Mounting displays to the arm assembly.

14 I apologize for my writing. Hopefully, you can kind of  
15 tell what that says.

16 A. Yes.

17 Q. Dr. Akin, haven't you just gotten rid of one  
18 of these tests? Didn't you just say the result was the  
19 same thing as the function?

20 A. I can't see what the result is, sir. I  
21 thought I said that --

22 Q. You said safely and securely -- it safely and  
23 securely mounts displays to the arm assembly, right?

24 A. I think that's what I said, sir.

25 Q. And the function is mounting displays to the

1 arm assembly.

2 A. Yes, sir.

3 Q. So what you're really saying is, the bulk of  
4 them really have the function, and then you know what?  
5 At the end, they still have the function.

6 A. No. The result has to be different from the  
7 function.

8 Q. So that's -- the result has to be different  
9 than the function.

10 A. Yes, sir.

11 Q. Okay. And if it's not, then this  
12 infringement analysis wouldn't be correct, would it?

13 A. You're correct, sir.

14 Q. Now, let's -- let's look at actually --  
15 figure out what -- what to grab here, but let's take DS  
16 100. That actually has some screens on it, right,  
17 Dr. Akin. Is that what this is?

18 A. Yes, sir.

19 Q. Okay. And then I'm going to put up here,  
20 along with this, the Mass unit that you opine -- scoot  
21 it over a little bit -- that you opine infringes -- or  
22 I'm sorry -- that you opine is covered by the patent.

23 A. That was my conclusion, sir, in regards to  
24 the Mass device.

25 Q. So we'll come back to mounting means. I want

1 to go to support means.

2 A. All right, sir.

3 Q. We apply the function-way-result test, right?

4 A. Yes, sir.

5 Q. Now, I'm going to put up on the screen to  
6 help out -- I have trouble following those little  
7 numbers, so I've taken the liberty of giving us a little  
8 more color to understand what it is that the Court's  
9 claim construction included for structure.

10 Do you see that?

11 A. Yes, I do, sir.

12 Q. And does that appear, on your review, to be  
13 an accurate indication of what the Court said was the  
14 structure that has to be either in the accused device or  
15 at least an equivalent to that?

16 A. That's correct, sir.

17 Q. Okay. So what we really have here is a bolt  
18 through a hole, right?

19 A. That's not the only thing, sir.

20 Q. Okay. But part of the structure is a bolt  
21 through a hole, isn't it?

22 A. A bolt through a washer connecting to a  
23 central plug, yes, sir.

24 Q. Okay. And then it's got some body that goes  
25 down, the support body, right?



1           A.       The upright support body, yes.

2           Q.       So you believe that this structure, with an  
3 arm and a clamp, is substantially the same, it's  
4 equivalent, to a bolt through a hole?

5           A.       I don't believe that was my testimony, sir.

6           Q.       So you don't -- you agree with me, then, that  
7 a clamp on an arm that's hooked to a post is not  
8 equivalent to a bolt going through a hole to hold up an  
9 arm.

10          A.       No, sir. I said that the DS 100 has an  
11 equivalent structure. It -- for example, when that  
12 joint is assembled together, the bolt, amongst other  
13 things, squeezes that joint together, it forces the  
14 washer against the upright.

15                 That connection develops a variable pressure  
16 that, in part, resists the overturning torque of the  
17 weight, and in part, develops a friction force that  
18 would be parallel to the upright, that is, vertical,  
19 that, in part, would resist the supporting of the weight  
20 itself.

21                 And there are other support surfaces that I  
22 could go on to identify, sir.

23          Q.       I apologize, but I don't know if I understood  
24 a thing you said.

25          A.       I'm sorry.

1 Q. And that's my fault because you're the  
2 doctor. But what I want to do is I want to look at the  
3 function-way-result here.

4 Now, let's step back and let's talk about --  
5 we're analyzing this as one of ordinary skill in the  
6 art, correct?

7 A. Yes.

8 Q. And you define that as a college graduate,  
9 right?

10 A. With a degree in either industrial design or  
11 mechanical engineering at the BS level.

12 Q. Yes. And then zero to three years  
13 experience.

14 A. Yes, sir.

15 Q. Okay. So we're talking a 22- to 25-year-old  
16 kid.

17 A. I don't remember that far back, sir.

18 Q. And you are not one of ordinary skill in the  
19 art, are you?

20 A. No, sir.

21 Q. You have a Ph.D.

22 A. Yes, sir.

23 Q. And we already went through your credentials.

24 A. Yes, sir.

25 Q. Now, to a 25-year-old kid -- 22- to 25-year

1 old kid, who's got, you know, all this mechanical  
2 engineering done, let's talk about the way -- in his  
3 eyes or her eyes, how this functions.

4 Now, you would agree with me that the  
5 structure shown in the support means creates a fixed  
6 arm.

7 A. You -- fixed in regards to vertical  
8 elevation, sir?

9 Q. Yes.

10 A. Yes, sir, I will agree.

11 Q. Okay. So that's one of the ways it supports  
12 it. It supports it in a fixed fashion.

13 A. I would agree.

14 Q. And this DS 100 doesn't support it in a fixed  
15 fashion, does it?

16 A. In the viewing mode, it is, yes, sir.

17 Q. Is that fixed?

18 A. You just illustrated, sir, that it can slide  
19 up and down, which is an additional ability not covered  
20 by the claim of the patent, but it's also, in my  
21 opinion, not the mode in which you would try to read  
22 text off the screen.

23 Q. But the point is, in the way it's supporting  
24 it, that's important. Because if I lean too hard and it  
25 slides down, that's -- that's supporting this in a

1 different way.

2       A.     No, sir, it's not. As I illustrated -- or I  
3 think I mentioned before, that when you squeeze together  
4 the vertical clamp on the DS 100, somewhat very  
5 analogous to the spring here, you'll see that you have a  
6 pressure around the post. That pressure asserts a  
7 horizontal pressure. Friction develops.

8             And so, again, here we have friction acting  
9 around the post in a vertical way that would contribute  
10 to supporting the weight and resisting the overturning  
11 torque to some extent.

12       Q.     I can push down on this as hard as I want,  
13 can't I, and it won't move.

14       A.     The Mass device, sir?

15       Q.     Yes, the Mass device. Thank you, for the  
16 record, for pointing that out.

17       A.     I guess that would be a correct statement.

18       Q.     This is going to break before it moves.

19       A.     Well, you're correct, sir, but I don't see  
20 the point. It's irrelevant. Because I'm not allowed to  
21 compare to an existing device. I'm supposed to compare  
22 it to the patent.

23       Q.     Didn't you opine that this has exactly the  
24 structure that's in the patent?

25       A.     One of the structures, yes, sir.

1 Q. Okay. Okay. So it's fair to look at this,  
2 because it has exactly the structure, exactly  
3 function-way -- I mean, exactly the structure in the  
4 patent.

5 A. I think that's a question of law, but it  
6 sounds like a reasonable point.

7 Q. Okay. So the only way these are going to  
8 move is if these arms shear right off; isn't that right?

9 A. Well, I could -- wouldn't say necessarily  
10 that that's the only failure mode. You're addressing a  
11 failure mode, instead of a functioning mode?

12 Q. That's one of the failure modes, is shearing.

13 A. I think I'm -- yes, I would agree that's one  
14 of the failure modes.

15 Q. Okay. So we have -- so if I push down on  
16 this, it slides up and down, because it's height  
17 adjustable, correct?

18 A. It slides down. Then you have to loosen the  
19 bolt and then slide it back up again. But it -- yes,  
20 sir, it is height adjustable.

21 Q. One of the results is that this (indicating),  
22 whether you want to or you accidentally do it, has the  
23 ability to slide up and down on this post.

24 A. The DS 100 does have that vertical adjustment  
25 capability, sir, that's not addressed in the claim

1 element.

2 Q. And it does not -- doesn't have that  
3 capability. This device does not support in a movable  
4 fashion.

5 A. Would you clarify which device is this  
6 device?

7 Q. I'm sorry. Thank you.

8 The patented structure that we're looking at  
9 on the screen for the support means, we said it was  
10 fixed.

11 A. That is fixed, yes, sir.

12 Q. And the support means here (indicating) is  
13 slidable.

14 A. It is.

15 Q. Okay.

16 MR. FINDLAY: Your Honor, I'm not sure  
17 all the jury can see the back of that.

18 MR. NIEDERLUECKE: I'm sorry.

19 Q. (By Mr. Niederluecke) So this mounting  
20 means -- I'm sorry -- this support means on the DS 100  
21 provides height adjustability, doesn't it?

22 A. That is correct.

23 Q. That's a freedom to the user, correct?

24 A. That's an additional freedom to the user  
25 that's not covered in either claim element.

1 Q. This is fixed, the DV -- the --

2 A. I think you're --

3 Q. Let me -- let me refer to the patent.

4 A. Yes, sir.

5 Q. The patent's -- the patent's support means is  
6 a fixed means.

7 A. Yes, sir. And both of them are -- or the  
8 structures identified by the Court are fixed with  
9 respect to height of the arm center.

10 Q. So your testimony is that this is equivalent,  
11 along with the pole -- don't forget the pole -- to a  
12 bolt going through a hole with a washer into a plug.

13 A. Yes, sir. For the ways that they transmit  
14 the weight and its overturning torque to accomplish the  
15 result of supporting the arm assemblies and displays  
16 from the base, that is my opinion, sir.

17 Q. And give me, if you would, an example of  
18 something that supports an arm that doesn't do it by  
19 variable pressure and friction.

20 A. Well, sir, one thing that comes to mind would  
21 be if one had an integral casting, for example, where  
22 the arm and the column were an integral casting. That  
23 would be one example, sir.

24 Q. So something a little closer to what we see  
25 right here (indicating), in fact, right?

1           A.       I'm sorry, sir. I can't see that.

2                   No, sir, that's not exactly what I was  
3 saying. That can be disassembled. I was talking about  
4 an integral casting where the horizontal portion and the  
5 vertical part going down to the base are a single piece  
6 of material.

7           Q.       So you're saying if this axis didn't have  
8 this little piece right here (indicating), this wouldn't  
9 be what you would consider to be equivalent to that  
10 structure?

11          A.       If it were a continuous integral piece, then  
12 instead of using bearing pressures and friction, it  
13 would use internal stress distributions to accomplish  
14 the support means, sir.

15          Q.       The result of the DS 100 says height  
16 adjustable and slidable on a pole, isn't it?

17          A.       That is correct.

18          Q.       And the structure in the support means that  
19 you claim is equivalent supports in a fixed function,  
20 not slidable, correct?

21          A.       You're correct.

22          Q.       By the way, the DS 100 has another feature  
23 with this support. It allows the screens to rotate,  
24 doesn't it?

25          A.       You are correct, sir.



1 Q. That structure does not that's in the patent,  
2 correct?

3 A. You're correct. That feature is not in the  
4 patent.

5 Q. Let's stay on this since we are talking about  
6 this structure.

7 The LX product, you believe that has an  
8 equivalent structure to the patented structure as well,  
9 right?

10 A. Yes, sir.

11 Q. This one's not disassembled, so it may be a  
12 little more difficult to understand what's on here, but  
13 you disassembled this, right?

14 A. No, sir, I did not. I did a partial  
15 disassembly. I was instructed not to damage the unit,  
16 so I could not completely disassemble it.

17 Q. Do you -- do you know what's inside of this  
18 box right here (indicating)?

19 A. Yes, sir, I do.

20 Q. And this is -- by the way, we're looking at  
21 Exhibit -- Defense Exhibit 1004, the LX.

22 And there are -- there are springs in that  
23 box, aren't there?

24 A. Yes, sir.

25 Q. And have you ever heard of something called

1 constant force technology?

2 A. Yes, sir.

3 Q. And constant force technology is technology  
4 where you can just kind of press it one place or  
5 another, and it's going to stay.

6 Is that kind of how it works?

7 A. Yes, sir. It uses -- constant force  
8 technology, as you described it, uses springs that are  
9 basically adjusted to support the majority of the weight  
10 of an object, in this case, the displays, and in  
11 addition to that, it has a frictional brake associated  
12 with it so that it will, by friction, stop at a position  
13 and support the weight.

14 But it's a -- the user can apply a relatively  
15 small amount of additional force up or down to overcome  
16 that friction and move it to a new position, and then it  
17 will, again, stop, and the friction will brake it there.

18 Q. Right. So this support means actually has  
19 the ability to go down --

20 A. Correct.

21 Q. -- right?

22 And that's a spring in there, right?

23 A. There's a spring and other components in  
24 there and a frictional brake to hold it there.

25 Q. So we've got spring forces acting in this

1 device, right?

2 A. Yes, we do.

3 Q. Okay. We don't have any spring forces acting  
4 in that device, right?

5 A. You are correct.

6 Q. There's my marker.

7 And, in fact, this one, even better than the  
8 DS 100, allows you to, just with fingerprints, adjust  
9 the height, correct?

10 A. Yes. That's the advantage of the constant  
11 force technology and its braking system.

12 Q. Yeah. That's a result of the manner in  
13 which this structure supports the arm, isn't it?

14 A. It's a result of the way that arm is designed  
15 to allow height adjustment, and then, of course, once  
16 you stop it, it becomes a static support as covered by  
17 the claim.

18 Q. So what you want to do is you want to fix it  
19 right now, right?

20 A. Yes, sir. I would say, in that position, you  
21 would find that it is being held -- the arm is being  
22 held above a surface, which is supposed to be the  
23 result, above the base, as are the displays, through an  
24 internal combination of springs creating forces and  
25 friction squeezing together. It has a brake element in

1 it, and it has other elements in it.

2 Q. So, again, if I lean on this, it's going  
3 down, isn't it?

4 A. You're exactly right, sir.

5 Q. Kind of back to -- that gets us really right  
6 back to this kind of test.

7 What's -- what's the result we end up with  
8 for the mounting means, Dr. -- or the support means, Dr.  
9 Akin?

10 A. The mounting means result is supporting the  
11 arm assemblies and the displays from the base.

12 Q. Okay. That's the result. That's the result,  
13 right? That's what you just said to me.

14 A. Yes, sir -- oh, no. I think I said that, but  
15 I believe that's wrong. Oh, no.

16 Are we talking about mounting means or  
17 support means?

18 Q. We're talking about support means here.  
19 And what is -- what is the way -- or the result -- we're  
20 looking at the result prong. What's the result for the  
21 support means?

22 A. It supports the arm above the base.

23 Q. Okay. So, again, we have -- you just said  
24 supports the arm above the base. If we look at what the  
25 Court has indicated that we should apply for a function,

1 supports the arm from the base.

2           So your testimony is, well, we're right back  
3 to function again, and if I can find any structure that  
4 gets me back to function, it's equivalent; isn't that  
5 right?

6           A.     No. I've, obviously, misquoted, because the  
7 result cannot be the same as the function, sir.

8           Q.     Well, we'll let -- we'll see if -- what  
9 the -- what your testimony was and what we heard, but  
10 that's what I heard.

11           Now, let's -- if we can, let's get away from  
12 the support means and let's talk about the mounting  
13 means.

14           Now, the mounting means in the accused  
15 structure is a ball and socket, among other things,  
16 correct?

17           A.     That is correct, sir.

18           Q.     And I've got a nice color drawing for people  
19 like me that aren't as quick as you are, Doctor.  
20 Is this, in your view, an accurate representation of  
21 what the Court has identified as a structure that's  
22 required in the patent?

23           A.     It is, sir.

24           Q.     And that's a ball-and-socket joint, correct?

25           A.     Yes, sir.

1 Q. And that ball-and-socket joint, as part of  
2 the structure, is fixed in one part of the arm; is that  
3 correct?

4 A. Is it fixed at one point in the arm, sir?

5 Q. Yeah. I mean, it hooks into an arm at a  
6 given spot, right?

7 A. Yes, sir.

8 Q. Okay. And then it's fixed to the back of the  
9 display, correct?

10 A. It is, sir.

11 Q. Okay. And you mentioned -- the back of the  
12 display, you mentioned some industry standard display  
13 mount.

14 Do you remember that?

15 A. Yes. And I think I mentioned that there are  
16 some standards for the dimensions between where screws  
17 are supposed to be located.

18 Q. Do you know what that standard's called?

19 A. I believe it's the -- called the VSA  
20 standard.

21 Q. The VSA standards?

22 A. I believe that's it, sir.

23 Q. Do you know who came up with the VSA  
24 standards --

25 A. I do not.

1 Q. -- to mount a -- stands to the arm -- or to  
2 the display?

3 A. I do not, sir. I thought it was a committee  
4 of industrial people, sir.

5 Q. Would it surprise you to know that Harry  
6 Sweere, the founder of Ergotron, actually developed and  
7 contributed that VSA mount configuration to the  
8 Standards Committee?

9 A. That would make sense to me that he would be  
10 one -- that his company would be represented on such a  
11 committee.

12 Q. Now, if we look at -- so what we have here is  
13 a ball and socket hooked into a fixed location on an  
14 arm, correct?

15 A. Correct.

16 Q. And we go back to the DS 100 system. This is  
17 a hinge (indicating), right?

18 A. Yes, sir.

19 Q. It's not a ball and socket, correct?

20 A. It is not literally a ball and socket, no,  
21 sir.

22 Q. Correct. Now, this hinge is slidably  
23 connected to the arm, isn't it?

24 A. You're correct.

25 Q. It allows the user the freedom to put

1 whatever size stand or whatever size display they want;  
2 isn't that correct?

3 A. Within reason, yes, I would say that's  
4 correct.

5 Q. So one of the results we get is  
6 flexibility -- make sure I spell that right -- in  
7 monitors; is that correct? That's a result of this  
8 sliding ability?

9 A. Monitor size is, yes, sir.

10 Q. Okay. And this structure doesn't have that  
11 benefit, does it?

12 A. No, sir, it does not.

13 Q. Now, this also moves in just one degree of  
14 freedom, right?

15 A. That is correct.

16 Q. It is a hinge, just like a hard door, right?

17 A. Yes, sir.

18 Q. So you can't have that full 360 degree of  
19 freedom that Mr. Segar talked about with the ball and  
20 socket where you said you can kind of do everything.

21 Do you remember that testimony?

22 A. I -- I think I would disagree with you, sir.  
23 I think maybe the question is not quite -- let me -- let  
24 me state what I think you said to me, sir.

25 Are you asking me whether a single axis can



1 rotate a full 360 degrees around the axis? Is that your  
2 question?

3 Q. No. I'm talking about -- I'm asking you  
4 whether -- whether this hinge can rotate about any axis.

5 A. No, sir. The hinge can only rotate about a  
6 single axis, whereas a ball joint can rotate about three  
7 mutually perpendicular axes.

8 So it, as I said earlier, includes the hinge  
9 as a subset of its rotational abilities, that is, the  
10 rotational abilities of a ball and joint.

11 Q. I'm going to ask you this question that I  
12 asked you at your deposition since you've come up  
13 with -- you've come up with a structure for me.

14 This whole subset idea, can you tell me what  
15 structure allows rotation in one device that is not  
16 going to be a subset of your ball and socket?

17 A. I'm not sure I understand the question.  
18 Are you asking me, is there another structure that I  
19 could suggest to you that would allow you to accomplish  
20 that rotation without being the hinge or a ball and  
21 socket?

22 Q. Or without being a subset of a ball and  
23 socket, because that's what you -- that's how you found  
24 this to be equivalent, right? It's a subset of a ball  
25 and socket.

1           A.       Yes. A hinge is a subset for rotational  
2 abilities of a ball and socket, but I'm not sure I  
3 understand what you're saying in your question, sir.

4           Q.       Well, let me step back.

5                   Mounting means also includes the means for  
6 adjusting the angular orientation of the screens, right?

7           A.       No, sir. That's the adjusting means.

8           Q.       Okay. The adjusting means has the angular  
9 orientation, right?

10          A.       It does.

11          Q.       And it's the same structure as the mounting  
12 means.

13          A.       It is the same physical structure, yes, sir.  
14 I'm not sure what question we've got pending.

15          Q.       And my question is, can you tell me a device,  
16 a structure, any structure, that has the function of  
17 adjusting the angular position of the displays side to  
18 side, like we talked about, that wouldn't be a subset of  
19 this three-axis system?

20          A.       Yes, sir.

21          Q.       And what device would that be?

22          A.       Well, for example, I believe that a four-bar  
23 kinematic linkage would accomplish that rotational  
24 ability in a substantially different way.

25          Q.       What did you call it?

1 A. A four-bar kinematic linkage.

2 Q. Oh, okay.

3 Now, with the hinge, I just rotated the back  
4 part (demonstrating). Did you see that?

5 A. No, sir, I did not see that.

6 Q. Here, I'll do it again (demonstrating).  
7 There's the hinge.

8 A. Yes, sir.

9 Q. I loosen it a little bit, and I rotate it.  
10 Do you see that?

11 A. Yes, sir.

12 Q. Now it just goes up and down, correct?

13 A. Correct.

14 Q. And, in fact, when it just goes up and down  
15 on the DS 100, it now allows the screens to tilt, right?

16 A. That is correct.

17 Q. Now, you would agree with me that in this  
18 configuration, even if you mount screens on this, you  
19 mount displays on this --

20 A. All right, sir.

21 Q. -- it doesn't have the ability to angle -- it  
22 doesn't -- in this configuration right here, the screens  
23 are going to be up and down, right, tilt?

24 A. Correct.

25 Q. They can't pan, right, in this configuration?

1 A. Correct.

2 Q. Now, did you notice that one degree of  
3 freedom on the DS 100 and how, when you move the  
4 displays, one of the other results you have is you're  
5 guaranteed that it's gong to stay in that same  
6 orientation?

7 So it doesn't matter whether I grab it down  
8 here or grab it up here or how I move these, I can reach  
9 across, and I can move them like that (demonstrating),  
10 can't I?

11 A. Correct, sir.

12 Q. And no matter where I grab them and apply  
13 force, they're just going to move in one line, one  
14 angular motion, right?

15 A. I would agree with that in general, yes.

16 Q. Now, with the ball and socket, this is going  
17 to move differently, depending on where I touch it,  
18 right?

19 A. You are correct.

20 Q. So if I go like that or I go like this  
21 (demonstrating), you're not in the line anymore, are  
22 you?

23 A. Well, as you're pointing out, you can move it  
24 in two different axes, but it still includes the  
25 side-to-side capability.

1 Q. Somewhere in there, right?

2 A. Yes, it's present.

3 Q. But -- but -- but to get it to move exactly  
4 side to side, I'd have to grab this with two hands or  
5 I'd have to be really right on that exact spot -- and I  
6 didn't hit it there; we'll try it again and see --  
7 really on that -- almost that exact spot to get it to  
8 turn side to side like a hinge does (demonstrating).

9 A. I would agree that there would be a tendency  
10 for the ball joint to rotate about more than one axis  
11 simultaneously, depending on how you grabbed it, how you  
12 moved it.

13 Q. So here's another result: Controlled motion  
14 versus uncontrolled motion (demonstrating). Wouldn't  
15 you agree with me?

16 A. I wouldn't go so far as to call it  
17 uncontrolled. I would -- I would simply observe that it  
18 is an additional rotational ability beyond the claim  
19 element that's not relevant to the claims at discussion.

20 Q. Now, let's talk about the way it's supported,  
21 the way the hinge supports the display, okay?

22 A. Yes.

23 Q. This hinge --

24 A. The way the hinge mounts the display?

25 Q. The way it mounts the display to support the

1 weight, I think you said.

2 A. Yes. All right.

3 Q. This hinge on the DS 100 --

4 A. All right.

5 Q. -- supports the weight by a -- by a shear  
6 force essentially, right?

7 A. No, sir.

8 Q. It's not friction, is it?

9 A. Oh, yes, it is, sir.

10 Q. Okay. Because I remember -- I remember what  
11 the --

12 A. In part it's -- I said, in part, it's  
13 friction.

14 Q. Friction and variable force.

15 A. Variable pressure and variable friction that  
16 results in supporting the weight and the overturning  
17 torque of the displays being in front of the arm.

18 Q. So it's mounted the same way that a support  
19 structure is, right? They both rely on variable  
20 bearing, pressure, and friction.

21 A. They're not mounted in the same way, sir.  
22 They have different structures, so they are both  
23 accomplishing that in substantially the same way,  
24 however, for the mounting means.

25 Q. And so if I -- if I press down on this

1 (demonstrating) --

2 A. Yes.

3 Q. -- the DS 100 hinge, because it's relying on  
4 friction to support the mount, is this going to slide at  
5 some point? Is it going to slip?

6 A. It's not going to slip, no, sir.

7 Q. Okay. If I happen to lean on this one,  
8 what's going on happen? And I'm talking about the Mass  
9 product with the ball and socket.

10 A. Well, in that case, you have -- because you  
11 were pushing down, you have caused the display to go  
12 forward in sort of a tilting mode.

13 Q. It's -- it's supporting it by friction. The  
14 ball and socket relies on friction, right?

15 A. The ball and socket is relying on friction on  
16 the bearing surfaces to support the -- to mount the  
17 displays, as is the DS 100.

18 Q. You're sure about that. You're sure that --  
19 you're sure that this is a friction that I can overcome.  
20 You explained it with the box. I remember the box on  
21 the floor. I can overcome this friction before this  
22 device breaks, right?

23 A. I did not say that, sir, because you are  
24 pushing down. I said that the friction that is present  
25 is that there's a horizontal surface at the top of the

1 hinge, and there's a horizontal surface at the bottom of  
2 the hinge, and you're trying to rotate it forward, tilt  
3 it over.

4           And so the force on the top, horizontally,  
5 friction will pushing one direction. The friction force  
6 on the bottom will be in the other direction. They're  
7 separated by a distance, a lever arm, and that  
8 accomplishes, in part, resisting the overturning torque.  
9 Now, in addition, you're primarily pushing down on the  
10 joint, which is putting more weight on it. So friction  
11 has to be present in the hinge joint as well.

12           Q.     Is that the primary reason this display is  
13 not going town right now, is friction? Is that what  
14 your testimony is, Doctor?

15           A.     Neither I or Dr. Stoll, when asked to do  
16 calculations on that -- so I can't give you, you know, a  
17 calculated answer, but I would agree with you that in  
18 this device, I would think that the majority is being  
19 carried by the bearing pressure but not all.

20           Q.     I can scoot these displays with the accused  
21 hinge like that (demonstrating), if I wanted to,  
22 couldn't I?

23           A.     Yes, sir.

24           Q.     Can't do it with the -- with the '798  
25 structure, can I?



1 A. No, sir.

2 Q. We've got more sliding.

3 All right. Let's try to get through this.

4 It's been a long day.

5 The LX also has hinges, does it not?

6 A. It does indeed.

7 Q. And they go side to side like the DS 100?

8 A. Correct.

9 Q. Again, the LX slides, doesn't it?

10 A. You're correct, sir.

11 Q. It doesn't have a mount that goes into a  
12 hole, does it?

13 A. It does not.

14 Q. This provides a slidable support to the  
15 display, doesn't it?

16 A. Yes, sir.

17 Q. And that '978 structure does not, correct?

18 A. You are correct, sir.

19 Q. Dr. Akin, in each of your analyses of the  
20 structure for the means-plus-function, you rely on these  
21 terms of variable pressure -- or I'm sorry -- variable  
22 bearing pressure and friction, correct?

23 A. Yes, sir.

24 Q. And you rely on those regardless of whether  
25 you're talking about the mounting means or whether

1 you're talking about the support means, correct?

2 A. I found those ways in both the supporting  
3 means and the mounting means, yes.

4 Q. So you found two types of forces that are  
5 present in basically all the mounting stuff we've looked  
6 at and the support stuff we've looked at?

7 A. Forces and torques, yes.

8 Q. And so your conclusion is that based on  
9 somebody of ordinary skill in the art who's either just  
10 graduated from college or has been out for three years,  
11 that somebody in college with a degree, if I asked them,  
12 is a hinge equivalent to a ball and socket, your  
13 testimony is that that college graduate is going to say  
14 yes?

15 A. No, sir, that's not my testimony. Whether or  
16 not they might be equivalent -- equivalent would depend  
17 on the application, because there are other aspects  
18 other than just rotation.

19 What I have said is that the single degree of  
20 freedom axis rotation, the visible part of a hinge  
21 action is a subset of the more general 3 degrees of  
22 rotation of a ball joint.

23 MR. NIEDERLUECKE: I'm getting close,  
24 Your Honor. If you want to keep going for just a slight  
25 while longer, I'll be done.

1 THE COURT: All right.

2 Q. (By Mr. Niederluecke) Dr. Akin --

3 A. Yes, sir.

4 Q. -- you explained to us in your direct that  
5 the DS 100 device is a term of art, but it's not a  
6 staple article of goods or staple goods; is that right?

7 A. That's my opinion, yes.

8 Q. And so we all understand what you -- what you  
9 mean, is that there's only one particular way to use  
10 this device, and it's an infringing way; is that right?

11 A. As it exists there, it is intended, in my  
12 opinion, to be combined with a pair of displays which  
13 would always form an infringing system.

14 Q. So you're just looking at a device that  
15 allows -- as it's here, that allows two displays to  
16 tilt?

17 A. Yes, sir. Because, as you clearly  
18 illustrated for us, it is easy to reconfigure those  
19 joints into a mode that would be an infringing mode --

20 Q. Dr. Akin, I'm going to stop you there. You  
21 don't have that in your report, do you?  
22 In fact, let me ask you --

23 MR. NELSON: Your Honor, may we approach,  
24 please?

25 THE COURT: Yes, you may.

1 (Bench conference.)

2 MR. NELSON: I believe what's happened  
3 is, he was trying to give a truthful answer, and  
4 Mr. Niederluecke cut him off.

5 And Mr. Niederluecke is going to open the  
6 door and ask a question, and Dr. Akin has to give a  
7 response, and Dr. Akin should be able to give his entire  
8 response to the question.

9 MR. NIEDERLUECKE: And he's brought this  
10 up sideways through the substantially non-infringing  
11 uses.

12 What I'd like to -- Your Honor, what I'd  
13 like to tell him is, I want him to focus on the  
14 structure as it's shown here.

15 MR. NELSON: He just cut Dr. Akin off.

16 MR. NIEDERLUECKE: I did, because he was  
17 about to testify to something that's not in his report.  
18 And in fact, as I said --

19 THE COURT: What was the question that  
20 you asked?

21 MR. NIEDERLUECKE: The question was  
22 whether or not -- I was asking him about the tilting,  
23 and so this configuration, as it sits here, doesn't  
24 infringe.

25 And he was about to go into the

1 explanation that he hasn't brought any expert opinion  
2 on, which is -- as we talked about earlier, which is you  
3 could -- well, that you could just turn them around, and  
4 then it wouldn't be capable of infringement. And that's  
5 not the basis of his infringement analysis.

6 MR. NELSON: He's got to give a truthful  
7 answer to that. He can't cut him off. He has -- he has  
8 asked the question. He has just opened the door to the  
9 question.

10 MR. NIEDERLUECKE: I can rephrase the  
11 question and say, I want you to focus on just as it is  
12 setting here.

13 MR. NELSON: It doesn't really matter --

14 THE COURT: Well, I'll allow him to ask  
15 the question. I think you've opened the door with it.

16 (Bench conference concluded.)

17 Q. (By Mr. Niederluecke) Dr. Akin, I want to  
18 analyze this product just as it's configured here, okay?  
19 And my question is, just as it's configured here --

20 A. Yes, sir.

21 Q. -- it provides tilting, correct?

22 A. Correct.

23 Q. And it doesn't provide the angling towards  
24 each other to a desired degree as the patent requires,  
25 correct?

1           A.       You are correct.

2           Q.       Dr. Akin, you saw some fixtures put up on the  
3 board that were some instruction manuals, correct?

4           A.       Yes, sir.

5           Q.       You've also seen that Ergotron advertises the  
6 use of its product as being able to either tilt or pan,  
7 correct?

8           A.       You are correct. I did not find that in the  
9 installation manual, but there was at least one document  
10 presented by Ergotron that showed that, sir.

11          Q.       This is a mounting solution product  
12 selection. Do you see that?

13          A.       I'm looking at it, sir. It's a little bit  
14 out of focus for me, sir.

15          Q.       It may just be a bad picture.

16          A.       Are you referring to the side view up at the  
17 upper left portion?

18          Q.       Well, I just want to identify the document,  
19 so we're clear.

20                   MR. NELSON: Your Honor, could we  
21 approach?

22                   THE COURT: Yes.

23                   (Bench conference.)

24                   MR. NELSON: It's now seven minutes past  
25 the hour, and we would request -- there doesn't appear

1 to be a stopping point in sight. We're going to have at  
2 least a couple of minutes of redirect. We would ask  
3 that perhaps we take a break for the evening at this  
4 point.

5 MR. NIEDERLUECKE: I -- literally, I've  
6 got like five minutes left, and I'm done.

7 THE COURT: All right.

8 (Bench conference concluded.)

9 Q. (By Mr. Niederluecke) Dr. Akin, do you see in  
10 the upper left-hand corner, it says DS 100?

11 A. I see a vertical monitors pair, sir, I've not  
12 considered before.

13 Q. Well, we'll fix that, and we'll give you this  
14 DS 100 series.

15 A. Thank you, sir.

16 Q. You recognize those series on the bottom,  
17 right, those configuration options?

18 A. Again, it's so out of focus for me, sir --  
19 oh, that?

20 Q. How about that?

21 A. Sir, it's out of focus. Could you give me  
22 the hard copy or -- I mean, that's getting better, sir.

23 Q. Okay. Let me roll it here, and I'll freeze  
24 it.

25 A. Okay. You are -- I think it says

1 freestanding base, cross bar.

2 Q. That's the DS 100 dual, isn't it?

3 A. Two sliding pivots. It appears to be, yes,  
4 sir.

5 Q. Okay. And if you look down by my fingers --  
6 you can see my pen on my finger. I apologize.

7 A. All right, sir.

8 Q. You have a side view right next to my left  
9 finger there that shows that the LCD can be put in a  
10 configuration that tilts up to 180 degrees forward and  
11 back, correct?

12 A. That's -- well, I'm not sure that it  
13 illustrates a 180-degree aspect, but it does illustrate  
14 that it can tilt as you have identified, sir.

15 Q. So in Ergotron's advertisement --

16 A. You're correct. It does say up to 180  
17 degrees. I couldn't quite read that.

18 Q. Okay. So in their advertisements, they  
19 actually advertise that this system can be used to put  
20 it in that tilt fashion as well, correct?

21 A. You are probably correct, sir. I do not  
22 recall seeing an advertisement of that, but I will  
23 assume you can produce one for me. I don't see that  
24 it's unreasonable to expect that.

25 Q. And isn't it true, Dr. Akin, that you don't



1 know how end users set up the DS 100 system, do you?

2 A. Well, other than the fact that the  
3 installation manual instructs them to mount the  
4 monitors, I suggest -- I guess that's -- would be what I  
5 would know.

6 Q. Okay.

7 A. They would mount the monitors to the hinge.

8 Q. Okay. So you saw the installation manual?

9 A. Yes, sir.

10 Q. But you don't know -- you didn't go talk to  
11 any customers and say, how do you mount this, correct?

12 A. I did not, sir.

13 Q. Whether they prefer to have it in a tilting  
14 function or a panning function?

15 A. You're correct.

16 Q. Okay. And so one non-infringing way to set  
17 this up is to set it up so it doesn't move, have it all  
18 finally bolted down in a tilting fashion; isn't that  
19 correct?

20 A. If the hinges, for example, were permanently  
21 in that position, welded to the arms --

22 Q. Well, let's say slide -- slidably moving,  
23 but --

24 MR. NELSON: Again, Your Honor --

25 Q. (By Mr. Niederluecke) -- in this -- in

1 this --

2 THE COURT: Excuse me.

3 Q. (By Mr. Niederluecke) -- in this tilting  
4 fashion or --

5 THE COURT: Counsel, just a moment. We  
6 have an objection.

7 (Bench conference.)

8 MR. NELSON: He has, again, cut off  
9 Dr. Akin in mid sentence so that he cannot say -- to  
10 finish the answer. We appreciate it to give Dr. Akin  
11 the ability to ask the -- to answer the question.

12 He has opened the door here, and he can't  
13 ask the question and get an answer he doesn't like and  
14 then cut him off in mid sentence.

15 THE COURT: Let him finish his answer.

16 (Bench conference concluded.)

17 THE COURT: All right, Dr. Akin. You may  
18 finish your answer.

19 A. I was saying, sir, that if the hinge were  
20 welded or somehow permanently affixed, even if it were  
21 slidable, but permanently affixed and could only tilt,  
22 then I would agree with you, in my opinion, that that  
23 would be a non-infringing product, sir.

24 Q. (By Mr. Niederluecke) Dr. Akin, how long have  
25 you been working as a paid technical consultant?

1 A. Since 1968, sir.

2 Q. Forty years?

3 A. Forty years, yeah. Time flies when you're  
4 having fun.

5 Q. And you've been acting as a paid expert  
6 witness in about 35 cases?

7 A. Oh, no, sir, not -- not that I recall. I  
8 would think, over the 40 years, I would sort of remember  
9 approximately 20 cases. I really don't remember the  
10 number. Some of them product liability cases and some  
11 of them patent cases.

12 Q. And you're paid to be here, right?

13 A. I am paid for my time required to develop my  
14 opinions, yes, sir.

15 Q. And that's at \$350 an hour?

16 A. Yes, sir.

17 Q. And you have provided the opinions you  
18 provided on the stand today, correct?

19 A. Yes, sir.

20 Q. And you provide -- you anticipate providing  
21 an opinion regarding whether or not the '978 patent is  
22 invalid, correct?

23 A. You are correct.

24 Q. Okay. And you provided an opinion about  
25 whether or not the Mass product infringes, correct,

1 whether the Mass -- well, first, whether or not the Mass  
2 product is covered by the '978 patent, correct?

3 A. I have rendered that opinion, yes, sir.

4 Q. Yes. And you've also rendered an opinion  
5 whether or not the Mass product infringes, right?

6 A. I don't understand, sir.

7 Q. Isn't it true, Dr. Akin, that you provided an  
8 opinion in this case, on behalf of Plaintiffs, that that  
9 Mass product you see right there did not infringe Dell's  
10 '170 patent?

11 A. I would have to go back and review my report  
12 on the '170 patent, sir.

13 Q. You don't know, as you sit on the stand right  
14 now, if you opined that the '170 patent was not  
15 infringed by that product?

16 A. I developed over 450 pages of report, sir, so  
17 I have to admit, at the moment, I cannot remember.

18 Q. So you didn't know if you were going to come  
19 in here and say, you know, whether it infringes or you  
20 were going to come in here and say it doesn't infringe,  
21 correct?

22 A. I believe my instructions were -- was that I  
23 would not be testifying about the '170 patent, so I did  
24 not review my -- that portion of my report, sir.

25 MR. NIEDERLUECKE: Your Honor, may I

1 approach? And I just have one more question.

2 THE COURT: All right.

3 MR. NIEDERLUECKE: Or two more, actually.

4 Q. (By Mr. Niederluecke) If I can give you your  
5 report, and if you could just read the title of it.

6 A. Yes. The title of this report is Rebuttal  
7 Report to Expert Report of Dr. Ariz K. Silzars dated  
8 July the 2nd, 2008, and I am the author of this report  
9 for Mass Engineered.

10 Q. And in that report, is it not correct that  
11 you opined that the Mass device did not infringe the  
12 claims of Dell's '170 patent?

13 A. I assume that will be on the page that you  
14 marked, sir?

15 Q. Could be.

16 A. You are correct. That is a summary of my  
17 opinion on Page 7 of this report.

18 Q. And you heard the testimony here of  
19 Mr. Moscovitch that he admits they infringe.

20 A. Yes, I heard that testimony.

21 Q. Thank you, Doctor.

22 A. You're welcome, sir.

23 THE COURT: Redirect?

24 MR. NELSON: I have one question.

25 REDIRECT EXAMINATION

1 BY MR. NELSON:

2 Q. Dr. Akin, do height adjustability or leaning  
3 on monitors or any of these other functions that  
4 Mr. Niederluecke demonstrated have anything to do with  
5 the functions claimed in Claim 16 and Claim 17 of the  
6 patent?

7 A. No.

8 MR. NELSON: Thank you.

9 THE COURT: All right. Very well.  
10 May this witness be excused -- well, no further  
11 questions?

12 MR. NIEDERLUECKE: No further questions,  
13 Your Honor.

14 THE COURT: Thank you. You may stand  
15 down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: All right. Ladies and  
18 Gentlemen of the Jury, let me visit with you just a  
19 minute about where we are.

20 I have allowed each side in this case up  
21 to 15 hours of testimony. As it currently stands, the  
22 Plaintiff has used 7 hours, and the Defendant has used 8  
23 hours. Well, that adds up to 15, which means we've  
24 still got another 15 hours to go of testimony, if they  
25 use it all.

1                   Now, they may be kind and gracious and  
2 give you some time back, and I will be encouraging them  
3 to do that.

4                   I had told you that we were going to try  
5 to finish the evidence on Monday, and that is still my  
6 hope, but in order to do so, we're going to have to work  
7 very hard tomorrow, Friday, and on Monday to get through  
8 with the evidence.

9                   My hope would be that we could finish the  
10 evidence on Monday, come back on Tuesday morning; I  
11 would deliver my charge to you; you would hear closing  
12 arguments; and then by late morning or certainly lunch,  
13 at that time you could begin your deliberations on  
14 Tuesday.

15                  If we're not able to complete the  
16 evidence on Monday, then there's a very good chance it  
17 will bleed over long enough into Tuesday that we won't  
18 have enough time to get everything done on Tuesday, and  
19 we'll come back on Wednesday.

20                  So my question to you is -- and I want  
21 you -- we want to work at your convenience, because  
22 y'all are being, I know, greatly inconvenienced to do  
23 your public duty and service to be here as jurors, and I  
24 know both sides and the Court greatly appreciate that.  
25 Would it inconvenience anyone to start at 8:30 in the

1 morning and perhaps go until 5:30 tomorrow afternoon?

2           If it would, raise your hand. Nobody is  
3 going to be mad at you. We'll understand.

4           All right. Would you rather start at  
5 8:30 and maybe go till 5:30 tomorrow and maybe do that  
6 again on Monday to, hopefully, get through with the  
7 evidence on Monday without the necessity of going over  
8 into Wednesday? All of -- who would be in favor of  
9 that, please raise your hands.

10           I thought that might be the case. I'm  
11 pretty good at predicting juries, so...

12           All right. Well, we'll do that then. If  
13 y'all will -- wouldn't mind getting up a little bit  
14 earlier in the morning, I'm driving back and forth from  
15 Tyler. I don't like getting up earlier either, but I  
16 think that's what we really need to do to try to get  
17 through. I know that nobody wants to work on Saturday  
18 or Sunday.

19           So we'll see you back here in the  
20 morning. Please plan to be here ready to go at 8:30,  
21 and attorneys be ready to go, and we're going to start  
22 the evidence promptly at 8:30.

23           The jury is excused.

24           COURT SECURITY OFFICER: All rise.

25           THE COURT: Be adjourned.



(Recess.)

\* \* \* \*

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date: 12/31/08

\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
JUDITH WERLINGER, CSR  
Deputy Official Court Reporter  
State of Texas No.: 731  
Expiration Date 12/31/08

\_\_\_\_\_  
Date